

1979 S.C. Op. Atty. Gen. 44 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-30, 1979 WL 29036

Office of the Attorney General

State of South Carolina

Opinion No. 79-30

February 15, 1979

**\*1 SUBJECT: Adoption, Children, Confidential Information, Social Security.**

South Carolina Code, § 43-13-60 (1976), requiring all state agencies which provide for or arrange foster care for children to furnish information to the South Carolina State Foster Care Review Board, does not violate confidentiality requirements imposed upon the Department of Social Services under Federal regulations promulgated pursuant to Titles IV-A, IV-B, and XX of the Social Security Act.

TO: Barbara Chappell, Director  
Children's Foster Care Review Board System

QUESTIONS:

1. How does South Carolina Code, § 43-13-60 (1976) affect confidentiality requirements imposed upon the Department of Social Services by Titles IV-A, IV-B, and XX of the Social Security Act by requiring the agency to furnish information to the South Carolina Foster Care Review Board concerning matters involving foster care services in South Carolina?

STATUTES AND CASES:

Rev. Act of 1951, § 618, 65 Stat. 569

42 USCS § 600-626, § 1397

45 CFR § 205.50

54 ALR3d 768

S.C. Code of Laws (1976), §§ 15-45-140, 30-3-10, et seq. 43-1-80, 43-1-120, 43-1-150, 43-1-160, 43-9-10, et seq., 43-13-40(1)(2), 43-13-60

[N.Y.S. Department of Social Services v. Dublino](#), 413 U.S. 405, 37 L.Ed.2d 688, 93 S.Ct. 2507 (1973)

[DeCanas v. Bica](#), 424 U.S. 351, 47 L.Ed.2d 43, 96 S.Ct. 933 (1976)

[American Federation of Labor, etc. v. Marshall](#), 570 F.2d 1030 (D.C. Cir. 1978)

[Finance Committee of Falmouth v. Falmouth Board of Public Welfare](#), Mass., 188 N.E.2d 848 (1963).

DISCUSSION:

1. The State Department of Social Services was created by the General Assembly to supervise and administer certain public welfare activities and functions of the State of South Carolina. [S.C. Code, § 43-1-80 \(1976\)](#). Also, among other things, the Department of Social Services was authorized to secure all possible Federal aid and benefits available under the Social Security Act of Congress provided that any such action by the department did not lead to a violation of State law. [S.C. Code, § 43-1-120 \(1976\)](#). The Department was charged with supervising aid to dependent children provided through Federal funds, including aid to children placed in a foster family home. [S.C. Code, § 43-9-10, et seq. \(1976\)](#). The South Carolina Advisory Board for Review of Foster Care of Children was created by the General Assembly to, among other things, review every six months cases of children who have resided in public or private foster care so as to encourage and facilitate the return of all such children to their natural parents or, alternatively, to initiate such procedures pursuant to law which would make the child eligible for adoption. [S.C. Code, § 43-13-40\(1\), \(2\) \(1976\)](#). It is clear from the statute that the Foster Care Review Board was intended to act in an advisory capacity to the State Department of Social Services regarding adoptive and foster care services to such children. As noted above, the agency is also empowered to initiate adoption procedures on its own initiative. [S.C. Code, § 43-13-60 \(1976\)](#) directs, among other things, that all public agencies which provide for or arrange foster care for children shall cooperate with the Advisory Board by furnishing such records to the Boards as may from time to time be required.<sup>1</sup> Therefore, the statutory framework indicates that, although the Department of Social Services is directed to administer Federal funds in regard to providing services in care for children in foster family homes, the Foster Care Review Board was also created to coordinate its activities with those of the Department of Social Services in providing State assistance to children placed in foster family homes.

\*2 The Foster Care Review Board, inasmuch as it seeks to arrange permanent placement for children temporarily placed in foster family homes, must maintain confidential records and withhold the same from inspection by the public, as provided in [S.C. Code, § 15-45-140 \(1976\)](#). Therefore, the proceedings of the Foster Care Review Boards and the Department of Social Services regarding such information are exempt from the Freedom of Information Act of South Carolina. [S.C. Code, § 30-3-10, et seq. \(1976\)](#).

The standard governing the release of information held by an agency approved under Title IV-A and IV-B (42 USCS § 600-626), and under Title XX ([42 USCS § 1397](#)) of the Social Security Act has been set forth in [45 CFR § 205.50](#) of the Federal Regulations. Among other things, the regulation provides that the disclosure of information concerning recipients under the Social Security Act to any outside source must be limited to purposes directly connected with administration of a State plan approved under Title IV-A, IV-B, or XX. The State agency must have authority to implement and enforce the provisions for safeguarding information, and publication of lists or names of applicants and recipients is prohibited. The regulations set out the type of information which is to be safeguarded, such as names and addresses of applicants and recipients of services, and the regulations establish that the release or use of information concerning individuals applying for or receiving financial assistance or services must be restricted to agency representatives who are subject to the same standards of confidentiality as the approved agency. The family or individual must be informed whenever possible of a request for information from an outside source. It should be noted that these same policies for disclosure of information must be applied to requests for information from a governmental authority, the courts, or a law enforcement official as well as from any other outside source. It would therefore seem that the Department of Social Services may release such information so long as it remains within the guidelines set out by the Federal Regulations.

It is clear that the Foster Care Review Board performs a complementary function to that of the Department of Social Services in finding permanent placement for children temporarily placed in foster home care, a purpose which is directly connected with administration of the State plan pursuant to Titles IV-A, IV-B and XX. Thus, it appears that the Federal Regulations permit disclosure of information to a governmental agency such as the Foster Care Review Board, which is subject to the same standards of confidentiality as the Department of Social Services (see above).<sup>2</sup>

There appears to be no Federal law which would contravene state policy directing that agencies such as the South Carolina Department of Social Services disclose certain information to the Foster Care Review Board, as required by [S.C. Code, § 43-13-60 \(1976\)](#). First, it should be noted that there is no provision of the Social Security Act which indicates that the Federal

government intends to pre-empt any State action regarding children placed in foster homes. The United States Supreme Court has recognized the existence of separate State and Federal plans for dealing with common purposes in the case of [N.Y.S. Department of Social Services v. Dublino](#), 413 U.S. 405, 37 L.Ed.2d 688, 93 S.Ct. 2507 (1973), where the court stated that, 'Where coordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes, the case for Federal pre-emption becomes a less persuasive one.' The Supreme Court also recognized in [Dublino](#) that, 'It will not be presumed that a federal statute was intended to supercede the exercise of the power of the state unless there is a clear manifestation of the intention to do so.' Also, the United States Supreme Court, in dealing with a state statute concerning employment of illegal aliens, recognized that although the Federal government had a predominant interest in the field of immigration and foreign affairs, 'there would not appear to be a similar federal interest in a situation in which the state law is fashioned to remedy local problems, and operates only on local employers, and only with respect to individuals whom the Federal government has already declared cannot work in this county.' [DeCanas v. Bica](#), 424 U.S. 351, 47 L.Ed.2d 43, 96 S.Ct. 933 (1976). At least one Federal Court has recently noted that, 'We have been instructed that a Federal statute should not be given rigid interpretation that would prevent states from undertaking supplementary efforts toward the very same end.' [American Federation of Labor, etc. v. Marshall](#), 570 F.2d 1030 (D.C. Cir. 1978), citing [N.Y.S. Department of Social Services v. Dublino](#), *supra*.

\*3 There has been an occasion whereby the Supreme Court of Massachusetts allowed a town finance committee access to certain welfare records which were subject to the restrictions on disclosure of information under Title IV. The Massachusetts Court noted in [Finance Committee Falmouth v. Falmouth Board of Public Welfare](#), 188 N.E.2d 848 (1963), that proper investigation of welfare is directly connected with the administration of public assistance, and concluded that there was no indication of risk of loss of Federal funds because of the limited disclosure for public purposes which the Finance Committee sought to enforce. The rationale of the Massachusetts Court is clearly applicable to § 43-13-60, and serves as persuasive precedent. See also, [54 ALR3d 768](#).

Therefore, it is the opinion of this office that the requirements of § 43-13-60 do not violate Federal guidelines on disclosure of information under Titles IV-A, IV-B and XX, when the information is furnished under the procedures set out within the applicable Federal Regulations. See [45 CFR, § 205.50](#). However, it is not the opinion of this office that § 43-13-60 permits the Foster Care Review Board any control over the administration of the State plan as approved under Titles IV-A, IV-B and XX. Such control is vested in the South Carolina State Department of Social Services, and the Foster Care Review Board may only act in an advisory capacity to the Department of Social Services, as set forth in § 43-13-40(1), (2). See also [42 USCS, § 602\(a\)\(3\)](#).

#### CONCLUSION:

S.C. Code, § 43-13-60 (1976) requiring all State agencies which provide for or arrange foster care for children to furnish information to the South Carolina Foster Care Review Board, does not violate confidentiality requirements imposed upon the South Carolina State Department of Social Services under Federal Regulations promulgated pursuant to Titles IV-A, IV-B and XX of the Social Security Act.

Lindy Pike Funkhouser  
Staff Attorney

#### Footnotes

- 1 Specifically, [S.C. Code, § 43-1-150 \(1976\)](#) permits the Department of Social Services to furnish names and addresses of recipients of assistance for aid to dependent children to other agencies or departments of government which have regulations preventing publication of such information.
- 2 Also, it should be noted, parenthetically, that the Social Security Act should be read in light of the so-called Jenner Amendment (Rev. Act. of 1951, § 618, 65 Stat. 569), which reads, 'No state \* \* \* or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is \* \* \* entitled pursuant to Title I, IV, X or XIV of the Social Security Act, as amended, by

reason of the enactment or enforcement by such state of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds \* \* \* within such state, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.' The Jenner Amendment is embodied in [S.C. Code, § 43-1-160 \(1976\)](#), permitting public access to the names of the recipients receiving public assistance payments from the state or county Departments of Social Services, so long as such information is not used for political Services, purposes. When the aforesaid statutes are read in light of [§ 43-1-150](#) (see footnote 1), it would appear that the requirements of § 43-13-60 would certainly not violate Federal guidelines concerning confidentiality, insofar as the information relates to names and addresses of recipients of assistance through the state plan approved under Titles IV-A, IV-B or XX.

1979 S.C. Op. Atty. Gen. 44 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-30, 1979 WL 29036

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.