

1979 S.C. Op. Atty. Gen. 171 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-122, 1979 WL 29124

Office of the Attorney General

State of South Carolina

Opinion No. 79-122

October 18, 1979

***1 SUBJECT: Child Abuse; Investigation**

The county department of social services and other local agencies are charged with an affirmative duty to initiate and pursue a complete investigation of any suspected case of child abuse in their county. This duty, in line with a paramount, controlling interest on the part of the state in assuring that which is in the minor child's best interests, would allow a social worker or school teacher or counselor conducting or assisting in such an investigation to question a minor child on school grounds without parental consent.

TO: Thomas H. Davis
Director
Richland County Department of Social Services

QUESTION:

Is an agent of the county department of social services, or other reporting or investigating agency acting pursuant to the Child Protection Act, required to obtain the permission of a parent or guardian prior to interviewing a suspected victim of child abuse or neglect?

AUTHORITIES INVOLVED:

Child Protection Act of 1977, South Carolina Code of Laws (1976), Section 20-10-10, et seq.

[Cook v. Cobb](#), 271 S.C. 136, 245 S.E.2d 612 (1978)

[Escobedo v. Illinois](#), 378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758

[Hart v. Brown](#), 29 Conn. Sup. 368, 289 A.2d 336 at p. 387 (1972)

[In re Karwath](#), 199 N.W.2d 147 (Iowa, 1972)

[In re Williams](#), 265 S.C. 295, 217 S.E.2d 719 (1975)

[In re Sampson](#), 65 Misc. 2d 658, 673, 317 N.Y.S.2d 641, 657 (1970) [Koon v. Koon](#), 203 S.C. 556, 28 S.E.2d 89 (1943)

[Miranda v. State of Arizona](#), 378 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602

[Prince v. Massachusetts](#), 321 U.S. 158, 64 S.Ct. 438 (1943) 59 Am. Jur. 2d Parent and Child, §§ 9 and 10.

DISCUSSION:

By your letter of June 14, 1979, you have requested an opinion of this Office regarding the authority of the Department of Social Services to interview children in school during protective service investigations initiated pursuant to the Child Protection Act of 1977 without consent of parent or guardian.

The 'purposes' clause of the Child Protection Act sets out the following:

§ 20–10–30. Purpose.

Recognizing that abused and neglected children in South Carolina need protection, it is the purpose of this chapter to save them from injury and harm by establishing an effective reporting system and encouraging the reporting of children in need of protection; by establishing an effective system of services throughout the State to safeguard the well-being and development endangered children and to preserve and stabilize family life, whenever appropriate; by establishing fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members and by establishing an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

*2 The reporting system established thereunder clarifies that certain groups of individuals may report a suspected case of abuse, while others are affirmatively charged with a statutory duty to do so. It should be pointed out that both school personnel and caseworkers fall within the latter category:

§ 20–10–50. Persons to report.

(A) Any school teacher or counselor, social or public assistance worker, child care worker in any day care center or child caring institution, police or law enforcement officer or any judge having reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect is required to report or cause a report to be made in accordance with this.

(C) Reports of child abuse or neglect made pursuant to this section may be made orally, by telephone or otherwise to the county department of social services, or in the alternative, to a law enforcement agency in the county where the child resides or is found.

(1) Where reports are made pursuant to this section to a law enforcement agency, it shall notify the county department of social services of its response to the report at the earliest possible time.

...

In addition to its reporting duties, the county department of social services, as local protective services agency, Section 20–10–120(D), CODE (1976) as amended, is charged with a number of other duties which clearly assign it the task of coordinating and pursuing the investigation of child abuse matters:

§ 20–10–120. Duties of the local child protective agency.

(A) It is the purpose of this section to encourage the voluntary acceptance of any service offered by the child protective service agency in connection with child abuse and neglect, or any other problem of a nature affecting the stability of family life.

(C) Within twenty-four hours of the receipt of a report of suspected child abuse or neglect, the agency shall commence an appropriate and thorough investigation to determine whether a report of suspected child abuse or neglect is 'indicated' or 'unfounded'. The finding shall be made no later than sixty days from the receipt of the report. In conducting the investigation if the facts so warrant the agency investigator may petition the Family Court of the appropriate judicial circuit for a warrant to inspect the premises and condition of the child subject of the report. The Family Court shall issue the inspection warrant upon probable cause to believe the child is abused or neglected, as defined by this chapter.

...

(G) The local child protective service agency shall be charged with providing, directing or coordinating the appropriate and timely delivery of services to children found to be abused or neglected and those responsible for their care or others exercising temporary or permanent control over such children.

...

(J) If at any time after the initiation of protective services by the agency those receiving services indicate a refusal to cooperate, the agency shall withdraw. If the facts so warrant, the agency may petition the Family Court Act to intervene, but in no case shall the agency threaten such action to coerce participation.

*3 (K) The agency shall cooperate with law enforcement agencies and the circuit solicitor within the area it serves and establish such procedures as it deems necessary to facilitate the referral of child protection cases to the child protective services agency. Where the facts indicating abuse or neglect also appear to indicate a violation of criminal law, the agency shall notify the appropriate law enforcement agency of those facts for police investigation.

(L) The agency shall actively seek the cooperation and involvement of all local public and private institutions, groups, and programs concerned with matters of child protection and welfare within the area it serves.

§ 20–10–80. Emergency protective custody.

...

(C) When an officer takes custody of a child under this section, he shall immediately notify the appropriate local child protective service agency and Family Court of the circuit and shall make every reasonable effort to notify the parent, guardian or other person exercising temporary or permanent control over the child or the place of custody.

(D) The local child protective service agency shall, upon such notification, commence a child protective investigation, including immediate attention to the protection of other children in the home, or other setting where the child was found. The agency shall then initiate a removal proceeding pursuant to § 20–10–170 on or before the next working day in the appropriate Family Court.

...

Further, the county and State social services agencies are also required to deter child abuse through public information programs and to seek non-judicial solutions to the problem where possible:

§ 20–10–150. Information, training and publicity.

...

(B) The Department of Social Services Protective Services and the local child protective services agencies shall, on a continuing basis, inform the public of the nature, problem and extent of the child abuse and neglect and of the remedial and therapeutic services available to children and their families. The Department of Social Services and the local agencies shall also encourage families to seek help consistent with § 20–10–40.

Where efforts to reconcile the problems within the home have failed, the county department of social services, upon that information gathered in investigations, is the petitioning party for removal of custody:

§ 20–10–170. Removal.

(A) The Family Court shall have exclusive jurisdiction over all proceedings held pursuant to this chapter.

(B) Upon investigation of a report received under § 20–10–120, or at any time during the delivery of services by the agency, the local child protective services agency may petition the Family Court in its jurisdiction to remove the child from custody of the parent or guardian when the agency has probable cause to believe removal is necessary to protect the child's health or welfare.

(C) The petition shall contain a full description of the reasons why the child cannot be protected adequately in the custody of the parent or guardian, including a description of the condition of the child, any previous efforts to work with the parent or guardian, in-home treatment programs which have been offered and proven inadequate and the attitude of the parent or guardian towards placement of the child in an alternative setting. The petition shall also contain a statement of the harms the child is likely to suffer as a result of removal and a description of the steps that will be taken to minimize the harm to the child that may result upon removal.

*4 The foregoing provisions provide considerable authority for an investigation and in fact would appear, in conjunction with the following, to clearly require action in instances of indicated or suspected child abuse:

§ 20–10–190. Penalties.

Any person required to report a case of child abuse or neglect, or any person required to perform any other function under this chapter, who knowingly fails to do so, . . . shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or be imprisoned for not more than six months, or both.

It should be further pointed out that these provisions, when read in light of those pertaining to institutional abuse and neglect, Section 20–10–20(B), (C)(1), (E), (H), and § 20–10–160, clearly indicate an implied duty upon school personnel to assist in such an investigation, or, at the minimum, not to impede such an investigation where proper.

In your letter you have made mention of a 'privacy act', without specifically identifying same, as a basis upon which some school officials have refused to allow such interviews. It will be assumed for purposes of this opinion that you are referring to the Family Educational and Privacy Act, 20 U.S.C.A. § 1332G, a Federal provision addressed to written school records, primarily those of an academic nature. As such, it is submitted that the federal statute would not be applicable, except perhaps in the instance of a relevant written report pertaining to the child and prepared by the teacher or counselor.

It is a well established tenet that any rights which may inhere in the relationship of parent to child are qualified and not absolute, for the State, as *parens patriae*, has a primary, paramount and controlling interest in the welfare of the child. See, [Prince v. Massachusetts](#), 321 U.S. 158, 64 S.Ct. 438 (1943); 59 Am. Jur. 2d *Parent and Child*, §§ 9 and 10; [Cook v. Cobb](#), 271 S.C. 136, 245 S.E.2d 612 (1978); [Koon v. Koon](#), 203 S.C. 556, 28 S.E.2d 89 (1943). Parental consent is therefore not a fundamental prerequisite to valid state action in a minor's behalf where parental conduct is in conflict with the child's best interests. See, [In re Sampson](#), 65 Misc. 2d 658, 673, 317 N.Y.S.2d 641, 657 (1970); [In re Karwath](#), 199 N.W.2d 147 (1972); [Hart v. Brown](#), 29 Ann. Sup. 368, 289 A.2d 386 at p. 387 (1972).

With regard to any rights of the minor child which ostensibly might be prejudiced by the interview, it is submitted that clearly under such circumstances the tenets of neither [Miranda v. State of Arizona](#), 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 nor [escobedo v. Illinois](#), 378 U.S. 478, 12 L.Ed.2d 977, 84 S.Ct. 1758 would apply, and parental consent is not required. See also, [In re Williams](#), 265 S.C. 295, 217 S.E.2d 719 (1975).

CONCLUSION:

The Child Protection Act imposes a duty of proper reporting and investigation of suspected cases of abuse or neglect. In many instances there may be ample grounds for suspicion with a need for further corroboration. A properly conducted interview with the suspected victim would clearly provide a basis for determining the validity of such suspicions, the apparent severity of the problem, and the potential for preservation or rehabilitation of the family unit.

*5 The Act itself, by its very tenor and focus, assigns a priority to the rights and interests of the minor. As such, the balance between the child's rights and those of the parent, in conjunction with the duty upon institutional personnel to pursue legitimate avenues of inquiry, would not require parental consent to interview the child where the interests of the parent may be contrary to those of the child and of the State.

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