

1979 S.C. Op. Atty. Gen. 143 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-102, 1979 WL 29107

Office of the Attorney General

State of South Carolina

Opinion No. 79-102

August 14, 1979

***1 SUBJECT: Child Abuse, Procedure**

It is incumbent upon the office of the solicitor in each county, as part of their prosecutorial functions, to file the petition and subpoenas in child abuse cases and ensure that service of same is effected.

TO: Honorable Randolph Murdaugh, Jr.
Solicitor
Fourteenth Judicial Circuit

QUESTION:

Is it the duty of the Family Court Judge or of the solicitor's office to file petitions and subpoenas in child abuse cases and to ensure that service of same is effected?

AUTHORITIES INVOLVED:

Section 14–21–465, 1976 South Carolina Code of Laws, as amended. [Section 14–21–485, 1976 South Carolina Code of Laws, as amended.](#) Section 20–10–90(D), 1976 South Carolina Code of Laws, as amended. Section 20–10–30, 1976 South Carolina Code of Laws, as amended. Section 20–10–120(D), 1976 South Carolina Code of Laws, as amended. Section 20–10–170(A), (B), and (D), 1976 South Carolina Code of Laws, as amended. [Berry v. Atlantic Greyhound Lines, 114 F.2d 255 \(1940\).](#) [South Carolina Department of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 \(1978\).](#) [South Carolina State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 \(1946\).](#) [Winn v. Harby, 166 S.C. 99, 164 S.E. 434 \(1937\).](#)

DISCUSSION:

You have requested an opinion from this Office as to the duties of the Family Court and of the solicitor's office in the filing of petitions and subpoenas in child abuse cases and as to effecting service of same.

Pursuant to the Child Protection Act, the Family Court is vested with exclusive jurisdiction over all proceedings for the abuse or neglect of a minor child. Section 20–10–170(A), Code of Laws of South Carolina (1976) as amended. And it is the duty of the local child protective services agency, the county Department of Social Services in each county, § 20–10–120(D), Code, to petition the court for removal of a child from the custody of the parents or guardians in all proper cases. Section 20–10–90(D) and § 20–10–170(B).

Under § 20–10–180(C) of the Code (1976) as amended, the prosecutorial obligation in abuse or neglect matters is set out as follows:

The interests of the State and the local child protective services agency shall be represented by the circuit solicitor or his representative in the appropriate judicial circuit in any judicial proceeding under this chapter.

And it is clearly set out elsewhere in the Code that all prosecutorial functions and duties in the Family Courts shall be a responsibility of and be vested in the solicitor of the circuit wherein the court is located. Section 14-21-465, Code of Laws of South Carolina (1976) as amended.

That portion of the Child Protection Code to which you have apparently referred in your letter requesting an opinion, § 20-10-170(D), Code of Laws of South Carolina (1976) as amended, reads as follows:

Upon receipt of a petition under this section, the Family Court shall schedule a hearing to determine whether removal is necessary. The court shall notify the parent or guardian of the hearing by delivering a copy of the petition together with a notice of the hearing, including the date and time of the hearing, and an explanation of the right of the parent or guardian to an attorney under § 20-10-180. The court shall effect delivery at least twenty-four hours prior to the hearing; provided, that the respondent shall be allowed to seek leave of court for a continuance of not less than forty-eight hours.

*2 Your suggested interpretation of this provision would delegate primary responsibility to the Family Court for the execution, as opposed to general supervision, of what are largely ministerial functions in the prosecution of cases for abuse and neglect. Further, the interpretation suggested could, if pressed, to its conclusion, imply that the duty rests on the particular Family Court Judge himself to insure that service is effected. See 1960-61 Op. Atty. Gen. 284.

Under the Family Court Act, provision for the expenses of the Family Courts are set out at [§ 14-21-485, Code of Laws of South Carolina \(1976\)](#) as follows:

The General Assembly shall in the annual general appropriations act provide for the salaries, equipment and supplies of family court judges and the court reporters and secretaries authorized by the provisions of item (C), § 14-21-420. All other costs necessary for the operation of the family court system in a county including the salaries of necessary support personnel shall be provided for by the governing body of that county. (Emphasis provided).

From both the above provision of the Code in conjunction with practical experience with the Family Court system, it should be concluded generally that the Family Court is limited in those support personnel who are provided by county funds. Further, the provisions upon which you apparently have relied should be interpreted in light of the funding provision of the Family Court Act. See, [Winn v. Harby](#), 166 S.C. 99, 164 S.E. 434 (1932). And a choice of language in an act will not be construed with liberalism when to do so will defeat the lawmakers' manifest intention. [South Carolina State Bd. of Dental Examiners v. Breeland](#), 208 S.C. 469, 38 S.E.2d 644 (1946). A statute should be interpreted as a whole and in light of its scope, tenor and purpose. [Berry v. Atlantic Greyhound Lines](#), 114 F.2d 255 (1940). And a remedial statute should be liberally construed in order to effectuate its purpose. [S.C. Dept. of Mental Health v. Hanna](#), 270 S.C. 210, 241 S.E.2d 563 (1978).

It is clearly a purpose of the Child Protection Act of 1977 as amended to provide a uniform and effective system of services throughout the State to safeguard the well-being and development of endangered children. Section 20-10-30, Code of Laws of South Carolina (1976), as amended.

CONCLUSION:

With an eye towards both uniformity and effectiveness, it should be concluded that the functions described in your letter and under the pertinent Code provisions are more properly in the nature of prosecutorial functions rather than being within the judicial responsibility of the Court. As such, it is concluded that, in his role as officer of the Court, pursuant to those responsibilities affixed by statute, and by virtue of those ministerial duties which might be administratively assigned by the Court, the solicitor should assume the burden of effecting the implementation of such functions.

*3 Russell D. Ghent
Assistant Attorney General

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