

1978 WL 35139 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1978

*1 Mr. Elmer C. Whitten, Jr.
Grants and Contracts Review Unit
Office of the State Auditor
P. O. Box 11333
Columbia, S. C. 29211

Dear Mr. Whitten:

You have recently requested an opinion as to whether a juvenile may be required by the Family Court to participate in a restitution program when the type of restitution would involve employment, public services, or service to the victim by the juvenile, as opposed to the imposition of a fine or monetary restitution.

In a previous opinion issued by our office, we concluded that the Family Courts in their capacity as inferior courts of limited jurisdiction have only such jurisdictional powers as are given them by statute, and they cannot assume constructive powers, i.e., powers not literally given to them. The opinion further concluded that while the Family Court Act gives the courts wide power in disposition of juvenile matters under [Section 14-21-620 of the South Carolina Code of Laws, 1976](#), as amended, it does not give the courts specific authorization to impose restitution. 1969-70 Opinion, Attorney General No. 2836, p. 62. Although the type of restitution primarily considered in this opinion was monetary, the basic rationale of the opinion applies to the imposition of restitution in general. Restitution is the act of making good or giving equivalent for any loss, damage, or injury and regardless of whether money or service is involved, it is not within the statutory power of the Family Courts to impose it on a juvenile.

In June of this year the question of service-oriented restitution was considered in response to a request by Juvenile Placement and Aftercare as to whether restitution could be included as a condition of a juvenile's conditional release agreement. It was the opinion of this office that under present general statutory authority Juvenile Placement and Aftercare did not have the legal power necessary to enact such a program, and it was our advice to them to seek approximate legislation in the matter before proceeding.

Accordingly, it is the opinion of this office that the Family Courts under the present law cannot require a juvenile to participate in a restitution program involving employment, public service, or service to a victim. Appropriate legislation should be obtained before such a program is instigated.

Very truly yours,

B. J. Willoughby
Staff Attorney

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