

6976 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 27, 2000

Lt. C. M. Constance, President
South Carolina Juvenile Officer's Association
216 LEC Road
Pickens, South Carolina 29671

Dear Lt. Constance:

By your letter of August 7, 2000, you have requested an opinion of this Office on the responsibility of law enforcement to take a report from the parents of and return to home a seventeen-year-old runaway .

As a preliminary note, there appears to be no direct statutory or common law authority that answers your question definitively. As you may be aware, the responsibilities of law enforcement, parents, and state agencies with respect to seventeen-year-old causes some confusion. South Carolina law attempts to recognize that a seventeen year old is no longer a child but is not yet legally an adult. As a result, in some instances statutes expressly provide for application to seventeen-year-old minors, and in others the law has left a gray area in which Legislative clarification or judicial determination would certainly be helpful. Unfortunately, your question falls into one of those gray areas.

The age of majority in South Carolina is provided for by statute: "all references to minors in the laws of this State shall ... be deemed to mean persons under the age of eighteen years..." S.C. CODE ANN. § 15-1-320. Generally, a parent's duty of support runs until the child reaches eighteen. See S.C. CODE ANN. § 20-7-420. However, for some purposes, a seventeen-year-old minor enjoys more freedoms, or depending on your perspective, more responsibilities, than minors sixteen and younger. For example, South Carolina law requires parents to maintain their child's enrollment in a suitable school from the age of five until the "ward attains his seventeenth birthday..." See S.C. CODE ANN. § 59-65-10. Also, parents are granted immunity from charges of neglect or failure to provide reasonable support for a seventeen-year-old child "where there is a demonstrable record that the child is incorrigible (beyond the control of parents)." S.C. CODE ANN. § 20-7-95. Thus, the law makes several exceptions for children at the age of seventeen, still minors but not entirely a protected class.

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Parental liability for the actions of their seventeen-year-old child is a fact specific issue. One very important question for parental liability is whether the child is emancipated, or released from the parents' control. If the emancipation of the child is complete, it "severs the parental relationship so far as legal rights and liabilities are concerned." Parker v. Parker, 230 S.C. 28, 94 S.E.2d 12 (1956). However, the determination of emancipation depends on the particular circumstances of each case, and ultimately, would be a question of fact for a jury to decide. See id. In Parker, the South Carolina Supreme Court upheld a jury determination of emancipation even though the minor lived in his parent's home. The case turned largely on upon parental supervision and authority. The testimony showed that the minor was gainfully employed, owned his own automobile, was a member of the national guard, and listed his aged father as a dependent on his income tax return. See id. In another case, Timmerman v. Brown, 268 S.C. 303, 233 S.E.2d 106 (1977), a minor left the home of her father with his consent. She remained away from home for a period of months without any contact with or supervision from her father when she incurred certain medical expenses. The Court held that the father's voluntary renunciation of his parental rights and the daughter's subsequent conduct were such that her emancipation was completely effected. The father, therefore, was found not to be responsible for the child's medical expenses.

Emancipation, as noted above, is based on the parents' voluntary renunciation of their parental control over the child. In instances of a runaway in which the parents do not consent to the child's departure from the home, the child would not be considered an emancipated minor under our case law. Similarly, the single fact that a seventeen-year-old minor has run away from home would not necessarily constitute a demonstrable record of incorrigibility necessary for parental immunity under S.C. Code § 20-7-95. Parents, therefore, are in some instances still legally responsible for their runaway seventeen-year-old.

Clouding the issue further are the statutory provisions relating to juveniles. This Office has previously opined that law enforcement has the legal right to take into custody a seventeen-year-old when the child's welfare, life, or physical safety is endangered. See Op. Atty. Gen. November 30, 1988; Op. Atty Gen. No. 85-126. These opinions were based, in part, on S.C. Code Ann. § 20-7-2080, which at the time was the codified version of South Carolina's Interstate Compact on Juveniles. When this section was codified at §20-7-2080, the applicable definitions provision defined "child" as "a person under the age of eighteen." See S.C. Code Ann. §20-7-490. Since the issuance of those opinions, 1996 Act No. 383 §2 repealed S.C. Code Ann. § 20-7-2080. The Interstate Compact on Juveniles is now codified at S.C. Code Ann. § 20-7-8705, labeled Subarticle 21 of Article 30, which is titled "Juvenile Justice." The General Provisions of Article 30 ("Juvenile Justice") contain definitions for words "used in this article." See S.C. Code Ann. § 20-7-6605. Here, "child" is defined as "a person less than seventeen years of age." Thus, the Juvenile Justice provisions, when referring to a "child" mean a minor sixteen years or younger. It appears from the re-codification of the Interstate Compact on Juveniles under the Juvenile Justice article that the General Assembly intended the entire article to apply to minors under the age of seventeen. The problem is that the Interstate Compact on Juveniles, which allows law enforcement to detain a

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runaway when his "welfare, life, or physical safety is endangered" does not use the defined term "child" when referring to the runaway. Instead the Compact repeatedly refers to the "juvenile," which is defined in the Compact as "any person who is a minor under the law of the state of residence of the parent..." S.C. CODE ANN. § 20-7-8705, Subsection 4. Again, although the general juvenile justice provisions apparently apply to children under seventeen, the Compact applies to "minors." The age of majority in South Carolina is eighteen, meaning that a seventeen-year-old is still a minor. In other words, the placement of the Interstate Compact on Juveniles suggests that law enforcement need not detain seventeen-year-old runaways, but a literal reading of the Compact's applies its provisions to anyone under eighteen.

Because there is no clear answer to your question, we would advise erring on the side of caution until further clarification from the courts or the General Assembly is provided. Caution, in these circumstances, would be action most protective of the child's welfare. We would advise that you take the report from the parents, enter the report in NCIC, and if the child is located, return the seventeen-year-old to home. Although the juvenile will be an adult soon enough, precaution mandates treating him as a child.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General