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May 29, 1986

The Honorable Wade S. Kolb, Jr.
Solicitor, Third Judicial Circuit
Courthouse
Sumter, South Carolina 29150

Dear Solicitor Kolb:

In a letter to this Office you questioned whether provisions of the Child Protection Act, Sections 20-7-480, et seq. of the Code, which deal with protecting abused and neglected children, are applicable to Shaw Air Force Base. You also raised the question as to which law enforcement division has jurisdiction to take a child into emergency protective custody. Such procedure is authorized by Section 20-7-610.

Section 3-3-320 of the Code states in part:

(t)he State hereby consents to acquisition by the United States of America of those certain pieces, parcels or tracts of land known as Shaw Air Force Base in Sumter County ... Exclusive jurisdiction in and over said Shaw Air Force Base and the above-described lands adjacent thereto so acquired by the United States of America shall be and is hereby ceded to the United States of America for all purposes except the service upon such sites of all civil and criminal process of the courts of this State....

Such provision was construed in S. C. Tax Commission v. Schafer Distributing Co., 247 S.C. 491, 148 S.E.2d 156 (1966) to indicate that State laws have no application within Shaw Air Force Base. However, this Office has in prior opinions dated February 13, 1979 and October 14, 1976, copies of which are enclosed,

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indicated that State statutes pertaining to abused and neglected children are applicable to a military reservation in Richland County, Fort Jackson. The February 13, 1979 opinion assumed for purposes of that opinion that the federal government possessed exclusive federal jurisdiction at Fort Jackson, a situation like that at Shaw Air Force Base. The February 13, 1979 opinion particularly stated:

(a)s a general rule, since transfer of exclusive jurisdiction to the federal government is a transfer of sovereignty, State laws have no effect upon federal enclaves subject to exclusive federal jurisdiction. However, there is a well recognized exception to this rule. Laws in existence at the time of transfer of sovereignty remain in effect, unless they conflict with federal law or use, until abrogated by the new government. ... In Paul v. United States, supra, the Supreme Court indicated that this principle is applicable where the same basic scheme of laws which existed before federal acquisition continues to the present. The Child Protection Act of 1977 is part of a scheme of law for the protection, care, and welfare of children which existed before the acquisition of Fort Jackson by the federal government and had continuously existed since that time. Aspects of this law that do not conflict with federal governmental functions and have not been abrogated by conflicting federal enactments are, therefore, applicable to Fort Jackson and State courts have jurisdiction over abused or neglected children on the Fort.

An opinion of the Kansas attorney general's office reached a similar conclusion as to the applicability of its State's laws dealing with abused children. An opinion dated January 16, 1981 stated:

(g)enerally, the federal government will exercise exclusive jurisdiction over persons residing within a federal enclave. However, the field of domestic relations, including the adjudication of custody of an abused and neglected child, is reserved to the several states. 'It is understood that the whole subject of the domestic relations of husband and wife, parent and child, belongs to the

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laws of the states, and not to the laws of the United States' ... This does not conflict with the exclusiveness of federal jurisdiction over Fort Riley or any other federal enclave, since the state may exercise its power over federal areas within its boundaries so long as there is no interference with said jurisdiction asserted by the United States....

See also: Opinion of the Kansas Attorney General dated February 7, 1985; Opinion of the Oklahoma Attorney General dated June 30, 1978; State in Interest of D. B. S., 349 A.2d 105 (N.J., 1975) ("not only would it be inconsistent to hold that a juvenile who benefits from the State's educational system and community life cannot also benefit from its juvenile laws, but it is our view that the State has an obligation to protect and rehabilitate a juvenile ... who, although housed on land ceded to the Federal Government, is a member of the social community of New Jersey"); In re Terry Y., a Minor, etc. v. Berry Y. et al., 101 C.A.3d 178 (Cal. 1980). A memorandum attached to your request letter which was prepared by individuals at Shaw Air Force Base dealing with varying types of legislative jurisdiction that may be exercised by the federal government over land areas also concurred in the conclusion that a legal basis exists for the application of state laws regarding child maltreatment in areas of exclusive federal jurisdiction.

In concluding that state child abuse laws are applicable in areas of exclusive federal jurisdiction, the opinions of the Kansas and Oklahoma attorneys general dated June 30, 1978 and February 7, 1985 also stated that cooperative agreements should be sought between local government officials and relevant representatives of the federal enclave where it is anticipated that the state will be asked to enforce its laws to protect children at a federal enclave. Therefore, to help avoid potential questions concerning the applicability of this State's Child Protection Act, obviously, similar cooperative agreements should be sought between officials at Shaw and those responsible for carrying out this State's Act.

You additionally asked which law enforcement division has jurisdiction to take a child at Shaw into emergency protective custody. In a telephone conversation, I was informed that you were particularly questioning whether a deputy sheriff could proceed in such circumstances. I was also told that in the past the deputies had routinely proceeded under provisions of the Child Protection Act in situations concerning children at Shaw. Lt. Col. Robert Leonard of the Staff Judge Advocate office at

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Shaw also confirmed such past action by deputies as to situations at Shaw. He further stated that in such cases, deputies were routinely accompanied by military security police in carrying out their duties. However, he also noted that the great majority of military housing for personnel at Shaw is located in an area of concurrent State-federal jurisdiction. Therefore, apparently the question referenced above as to the applicability of state law in an area of "exclusive federal jurisdiction" would not arise in the vast majority of child abuse cases.

The provision of the Child Protection Act particularly relevant in this situation is Section 20-7-610. Such provision states:

(A) (a) law enforcement officer may take a child into protective custody without the consent of parents, guardians or others exercising temporary or permanent control over the child if:

- (1) He has probable cause to believe that by reason of abuse or neglect there exists an imminent danger to the child's life or physical safety.
- (2) Parents, guardians or others exercising temporary or permanent control over the child are unavailable or do not consent to the child's removal from their custody.
- (3) There is not time to apply for a court order pursuant to § 20-7-736.

Obviously, such statute is a critical provision of the Child Protection Act. In order for such Act to be effective as to children at Shaw, it must be concluded that a deputy sheriff would be authorized to act pursuant to Section 20-7-610 as to situations of abuse and neglect. However, again, this is an area where cooperative agreement should be sought between county officials and officials at Shaw. Moreover, in keeping with

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prior practice, to avoid potential problems, military security police should accompany a deputy sheriff when he goes onto the air force base.

If there are any questions, please advise.

Sincerely,

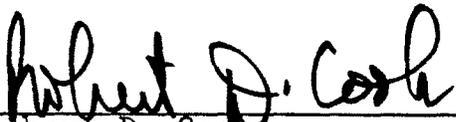


Charles H. Richardson
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Enclosures

REVIEWED AND APPROVED BY:



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