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HENRY MCMASTER
ATTORNEY GENERAL

August 28, 2006

The Honorable Michael A. Pitts
Member, House of Representatives
327-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Pitts:

We received your letter requesting an opinion concerning section 20-7-690 of the South Carolina Code and the privacy of children assigned a volunteer guardian by a court. You explain:

> My question is once the court puts the case in the hands of a volunteer guardian would the director or supervisor of the Guardian ad Litem program have access to those files against the wishes of a volunteer guardian? The situation where this could arise would be if there were personal conflict between the guardian and the supervisor within the system.

Law/Analysis

Section 20-7-690 of the South Carolina Code (Supp. 2005) is contained in the provisions of the South Carolina Children's Code (the "Children's Code") pertaining to the investigation of reports of child abuse and neglect by the South Carolina Department of Social Services ("DSS"). This provision governs the disclosure of reports and information regarding child abuse and provides:

> (A) All reports made and information collected pursuant to this article maintained by the Department of Social Services and the Central Registry of Child Abuse and Neglect are confidential. A person who disseminates or permits the dissemination of these records and the information contained in these records except as authorized in this section, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand five hundred dollars or imprisoned not more than one year, or both.

S.C. Code Ann. § 20-7-690. We described this provision in an opinion of this Office in 1991 as follows: "In this statutory provision, the General Assembly has made confidential, with certain

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narrow exceptions, all child abuse information and reports maintained by the Department." Op. S.C. Atty. Gen., March 1, 1991.

Subsection (B) of section 20-7-690 contains the exceptions to the general rule of confidentiality.

> (B) The department is authorized to grant access to the records of indicated cases to the following persons, agencies, or entities:
>
> > (1) the ombudsman of the office of the Governor or the Governor's designee;
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> > (2) a person appointed as the child's guardian ad litem, the attorney for the child's guardian ad litem, or the child's attorney;
> >
> > (3) appropriate staff of the department;
> >
> > (4) a law enforcement agency investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;
> >
> > (5) a person who is named in a report or investigation pursuant to this article as having abused or neglected a child, that person's attorney, and that person's guardian ad litem;
> >
> > (6) a child fourteen years of age or older who is named in a report as a victim of child abuse or neglect, except in regard to information that the department may determine to be detrimental to the emotional well-being of the child;
> >
> > (7) the parents or guardians of a child who is named in a report as a victim of child abuse or neglect;
> >
> > (8) county medical examiners or coroners who are investigating the death of a child;
> >
> > (9) the State Child Fatality Advisory Committee and the Department of Child Fatalities in accordance with the

exercise of their purposes or duties pursuant to Article 26, Chapter 7, Title 20;

(10) family courts conducting proceedings pursuant to this article;

(11) the parties to a court proceeding in which information in the records is legally relevant and necessary for the determination of an issue before the court, if before the disclosure the judge has reviewed the records in camera, has determined the relevancy and necessity of the disclosure, and has limited disclosure to legally relevant information under a protective order;

(12) a grand jury by subpoena upon its determination that access to the record is necessary in the conduct of its official business;

(13) authorities in other states conducting child abuse and neglect investigations or providing child welfare services;

(14) courts in other states conducting child abuse and neglect proceedings or child custody proceedings;

(15) the director or chief executive officer of a childcare facility, child placing agency, or child caring facility when the records concern the investigation of an incident of child abuse or neglect that allegedly was perpetrated by an employee or volunteer of the facility or agency against a child served by the facility or agency;

(16) a person or agency with authorization to care for, diagnose, supervise, or treat the child, the child's family, or the person alleged to have abused or neglected the child;

(17) any person engaged in bona fide research with the written permission of the state director or the director's designee, subject to limitations the state director may impose;

(18) multidisciplinary teams impaneled by the department or impaneled pursuant to statute;

> (19) circuit solicitors and their agents investigating or prosecuting known or suspected abuse or neglect of a child or any other crime against a child, attempting to locate a missing child, investigating or prosecuting the death of a child, or investigating or prosecuting any other crime established in or associated with activities authorized under this article;
>
> (20) prospective adoptive or foster parents before placement;
>
> (21) the Division for the Review of the Foster Care of Children, Office of the Governor, for purposes of certifying in accordance with Section 20-7-2386 that no potential employee or no nominee to and no member of the state or a local foster care review board is a subject of an indicated report or affirmative determination.
>
> (22) employees of the Division for the Review of the Foster Care of Children, Office of the Governor and members of local boards when carrying out their duties pursuant to Subarticle 4, Article 13; the department and the division shall limit by written agreement or regulation, or both, the documents and information to be furnished to the local boards.
>
> (23) The Division of Guardian ad Litem, Office of the Governor, for purposes of certifying that no potential employee or volunteer is the subject of an indicated report or an affirmative determination.

S.C. Code Ann. § 20-7-690(B).

Thus, section 20-7-690 of the South Carolina Code provides a general requirement of confidentiality with respect to records and information obtained by DSS in its investigation of abuse and neglect cases. Furthermore, subsection (B) of this provision allows DSS to release such information to certain parties including an appointed guardian ad litem. However, your question deals not with whether DSS may disclose such information, but rather whether the appointed guardian ad litem may or is required to furnish such information to the director or supervisors of the Guardian ad Litem Program (the "Program"). Therefore, we must look to the statutes governing guardian ad litems to determine any possible restrictions on their disclosure of such information.

Section 20-7-125 of the South Carolina Code (Supp. 2005) mandates DSS make available to the guardian ad litem reports referred to in section 20-7-690(A). That section states:

> All reports made and information collected as described in Section 20-7- 690(A) must be made available to the guardian ad litem by the Department of Social Services. Upon proof of appointment as guardian ad litem and upon the guardian ad litem request, access to information must be made available to the guardian ad litem by the appropriate medical and dental authorities, psychologists, social workers, counselors, schools, and any agency providing services to the child.

S.C. Code Ann. § 20-7-125. Section 20-7-126 of the South Carolina Code (Supp. 2005), however, specifically places a confidentiality requirement on guardian ad litems.

> (A) All reports and information collected pursuant to this subarticle maintained by the Guardian ad Litem Program are confidential except as provided for in Section 20-7-690(C). A person who disseminates or permits the unauthorized dissemination of the information is guilty of contempt of court and, upon conviction, may be fined or imprisoned, or both, pursuant to Section 20-7-1350.
>
> (B) The name, address, and other identifying characteristics of a person named in a report determined to be judicially unfounded must be destroyed one year from the date of the determination. The name, address, and other identifying characteristics of any person named in a report determined to be judicially indicated must be destroyed seven years from the date that the guardian ad litem formally is relieved of responsibility as guardian ad litem by the family court.
>
> (C) The Director of the Guardian ad Litem Program or the director's designee may disclose to the media information contained in child protective services records if disclosure is limited to discussion of the program's activities in handling the case. The program may incorporate into its discussion of the handling of the case any information placed in the public domain by other public officials, a criminal prosecution, the alleged perpetrator or the attorney for the alleged perpetrator, or other public judicial proceedings. For purposes of this subsection, information is considered "placed in the public domain" when it has been reported in the news media, is contained in public records of a criminal justice agency, is contained in public records of a court of law, or has been the subject of testimony in a public judicial proceeding.

According to these provisions, not only is DSS allowed to make these types of records and reports available to an appointed guardian ad litem, but section 20-7-125 requires these reports be

made available to an appointed guardian ad litem. Section 20-7-126, however, places strict confidentiality requirements on the information received by such guardian ad litems, unless disclosure is allowed pursuant to section 20-7-690(C). Section 20-7-690(C) states:

> (C) The department may limit the information disclosed to individuals and entities named in subsection (B)(13), (14), (15), (16), (17), (18), and (20) to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this subsection gives to these entities or persons the right to review or copy the complete case record.

The Legislature created the Guardian ad Litem Program (the "Program") by statute, and therefore, it and its director only have such powers and authority afforded to them by the Legislature, either expressly or impliedly. See Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) ("As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged."). Sections 20-7-125 and 20-7-126 do not address whether the director or supervisors of the Program have access, moreover mandatory access, to the records and reports described in section 20-7-690(A). Furthermore, section 20-7-690(C) and its related provisions do not expressly allow the director or supervisors access to this information. Therefore, we must examine the statutes pertaining to guardian ad litems to determine whether or not the director and supervisors of the Program have the implied authority to access this information.

We examine these statutes in light of the rules of statutory interpretation.

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

South Carolina Dep't of Transp. v. First Carolina Corp. of South Carolina, ___ S.C. ___, ___, 631 S.E.2d 533, 535 (2006). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." South Carolina State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006).

The plain language of sections 20-7-690(B)(2) and 20-7-125 only require guardian ad litems have access to the reports, not the Program or its director and supervisors. However, section 20-7-126, the confidentiality provision for guardian ad litems, refers to the "reports and information collected pursuant to this subarticle maintained by the Guardian ad Litem Program . . . ." (emphasis added). This provision indicates records collected by a guardian ad litem pursuant to sections 20-7-

690(B)(2) and 20-7-125 may not only be maintained by the individual appointed guardian ad litem, but also by the Program. Furthermore, section 20-7-126(C) states: "Director of the Guardian ad Litem Program or the director's designee may disclose to the media information contained in child protective services records . . . ." This provision also indicates the director of the Guardian ad Litem Program has access to this information in order to disclose it. Although not free from doubt, in reading the confidentiality provision as a whole, we believe the Legislature did not intend to limit access to these reports and records to the appointed guardian ad litem. Contrarily, we believe the Legislature intended for the Program to maintain such information and that it be accessible by its director.

While we believe disclosure of DSS reports and records to the director is permissible, whether or not such disclosure is mandatory is yet another question. Again, no provision in Children's Code dealing with guardian ad litems requires an appointed guardian to make such a disclosure. However, section 20-7-121 of the South Carolina Code (Supp. 2005), establishing the Program states:

> There is created the South Carolina Guardian ad Litem Program to serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court, pursuant to Section 20-7-110. This program must be administered by the Office of the Governor

S.C. Code Ann. § 20-7-121 (emphasis added).

From this provision, we gather the Legislature's intent to create a uniform, supervised volunteer guardian ad litem program. This provision also charges the Office of the Governor with administration of the Program. From what we understand, the Program employs a director and several regional supervisors to oversee its operations. Consistent with section 20-7-121, the Governor's Office most likely delegated the responsibility of supervision over the Program and thus, supervision over its volunteer guardian ad litems to these individuals. Furthermore, a court could find in order to properly supervise the guardian ad litems under their authority, the director and supervisors must have access to information obtained by the guardian ad litems in the course of conducting their duties. This conclusion is not, however, clear from the statute as it does not contain any provisions with regard to the authority of the director or any other employees of the Program. Thus, although we believe from our understanding of the Legislature's intent that it desired to establish supervision over the volunteer guardian ad litems, we are hesitant to conclude without further clarification from the courts or clarification of the statute by the Legislature that such supervision implies mandatory disclosure of DSS reports and records to the Program's director and supervisors.

Conclusion

Although not free from doubt, we believe the Legislature intended the Program and its director and other supervising authorities to have access to records and reports obtained by appointed guardian ad litems. In addition, we also believe a court could conclude the Program's director and supervisors have authority to review such information in their supervisory capacities. However, such a determination is tenuous at best. Therefore, we suggest you seek clarifications from the courts or through legislative action.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General