

6991 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 15, 2000

The Honorable Joe Wilson and The Honorable André Bauer
Members, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Wilson and Senator Bauer,

Thank you for your letter of September 11, 2000, requesting an opinion of the Attorney General's Office. You have concerns about the liability of parents for the actions of a seventeen-year-old child.

Your questions implicate many aspects of South Carolina jurisprudence, both statutory and common law. 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, which often creates confusion for parents coping with difficult teenagers.

The parents' 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

Disputed Letter

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.

Although the determination of a minor's emancipation is certainly one instance in which parents are no longer responsible for either the support or the liabilities of a minor child, there are other circumstances in which parents are not per se liable for the minor's actions. You referred in your letter to concerns about the parent's responsibility to pay damages when their seventeen-year-old is involved in an accident. Under the family purpose doctrine, when the head of the family provides an automobile for the general use and convenience of the family, that person is liable for damages caused by the negligence of any family member having the authority to use the vehicle. See Porter v. Hardee, 241 S.C. 474, 129 S.E.2d 131 (1963). Again, the liability of the parents under the family use doctrine involves numerous questions of fact. In Porter v. Hardee, the father was actually held not liable for the personal injuries of a plaintiff when his son was driving an automobile titled in the father's name. Although the son lived with the parents, received income from the father's farm, and the car was titled in the father's name because the son was a minor, the son purchased the car with his own money and intended to use the car exclusively for his own purposes. Under these facts, the court held that liability could not be imposed under the family purpose doctrine. In another case, however, the Court held that evidence that a mother purchased the car for her minor son, signed an application as owner of the car for the highway department to have title in her name, received insurance in her name as the owner, and obtained a loan using the car as collateral was sufficient to go to the jury as a question of fact of ownership of the vehicle for liability under the family purpose doctrine. See Reid v. Swindler, 249 S.C. 483, 154 S.E.2d 910 (1967). As with the determination of emancipation, liability under the family purpose doctrine depends on the particulars surrounding each case.

Finally, as for liability in contract, generally a contract entered into by a minor has been held to be voidable, not void at its inception. The contract may be voided at the option of the minor at any time prior to ratification. Ihley v. Padgett 27 S.C.30, 3 S.E. 468 (1887); Salinas v. Bennett, 33 S.C. 285, 11 S.E. 968 (1890). Because the minor, himself, may not be bound in contract when it is made in infancy, the parents can neither be bound. The minor may ratify the contract upon reaching the

Senator Wilson and Senator Bauer
September 15, 2000
Page 3 of 3


age of majority, but at that age the child is emancipated by operation of law.

In sum, the laws relating to seventeen-year-old minors may cause some confusion because they address the realization that a seventeen-year-old is no longer a child in practicality, but is not yet legally an adult. Fortunately for the parents, both the legislature and the common law have provided protections when the minor is no longer under parental control. Statutes such as S.C. CODE ANN. § 20-7-95 (granting parental immunity when the minor is incorrigible) and the doctrines of emancipation and family purpose (neither of which is age-specific) may provide adequate safeguards against your concerns. Of course, every theory of liability is unique, and we have only addressed those most relevant to your inquiry, but these issues are probably among the most important to those parents troubled by the actions of their seventeen-year-old 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,

A handwritten signature in cursive script, reading "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General