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The State of South Carolina

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June 11, 1993

Thomas S. Tisdale, Jr., Esquire
P. O. Box 993
Charleston, South Carolina 29402

Dear Mr. Tisdale:

In a letter to this Office you referenced the portion of S.C. Code Ann. § 20-7-780 which states:

> The name, identity or picture of a child under the jurisdiction of the court, pursuant to this chapter, must not be made public by a newspaper, radio or television station except as authorized by order of the court ....

On behalf of Solicitor Schwacke, you questioned whether such provision is constitutional, citing the decision of the South Carolina Supreme Court in State, ex rel., The Times and Democrat etc., 276 S.C. 26, 274 S.E.2d 910 (1981). That decision held that former S.C. Code Ann. 14-21-30, which as you pointed out contained almost identical language to that in § 20-7-780 referenced above, was unconstitutional.[1] In its decision holding that the statute violated the news media's First Amendment rights the Court referenced the U.S. Supreme Court decision in Smith v. Daily Mail Publishing Co., 443 U.S. 97 as indicating "... the State may not punish a newspaper for the publication of truthful information, lawfully obtained, about a matter of public significance, except when

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[1]Section 14-21-30 stated:

> The name or picture of any child under the jurisdiction of the court shall not be made public by any newspaper, radio or TV station, except as authorized by order of the court, ...

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necessary to further a State interest of the highest order." 274 S.E.2d at 911. The State Supreme Court determined:

> ... we are aware of no interest of the State or the juvenile which is sufficient to withstand the mandate of the First Amendment when there is an attempt to prevent, because of the youthfulness of the alleged offender, the truthful publication of lawfully obtained information about a juvenile charged with a crime.

274 S.E.2d at 911.

A prior opinion of this Office dated February 3, 1982 citing the referenced case noted that the decision

> ... did not reach the issue of whether a prohibition of disclosure would be improper. Regarding that, the U.S. Supreme Court has held that "there is no reason why, consistently with due process, a state cannot continue, if it deems it appropriate, to provide and improve provision for the confidentiality of records of police contacts and court action relating to juveniles." Re Gault, 387 U.S. 1, 25 (1967). Thus, except to the extent that the statute violated the First Amendment rights of the media, § 14-21-30 is otherwise constitutional.

The opinion noted further that § 14-21-30

> ... only requires court records and agency records to be kept confidential, as well as information obtained by an employee of the court and of the agencies named.

It appears therefore that the referenced portion of Section 20-7-780 is unconstitutional to the extent that it violates the media's First Amendment rights to publish information lawfully obtained. Of course, there remains the prohibition to the disclosure of information otherwise made confidential by Section 20-7-780. For example, as referenced by such provision, court records and records of the Department of Youth Services remain confidential except where expressly open to inspection.

With kind regards, I am

Very truly yours,

Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
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