



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 3, 1996

Mollie DuPriest, Director
State of South Carolina
Board of Juvenile Parole
4900 Broad River Road
Columbia, South Carolina 29210

Re: Informal Opinion

Dear Ms. DuPriest:

You note that it has been the experience of the South Carolina Board of Juvenile Parole that "in certain cases, the victims of juvenile crime has requested current photographs of offenders, particularly at the time of their parole from the Department of Juvenile Justice." Further, you state:

[r]ecently, in a particularly heinous murder case, the victim's surviving family members did not know the offender by sight and expressed concern that he might make contact with them and he would not recognize him. Also, juveniles grow and change as they mature while in the institutions and victims are often unable to recognize offenders at the time of their release.

Therefore, you make the following inquiry:

[t]he Parole Board respectfully requests a legal interpretation of the phrase "basic descriptive information" as set forth in South Carolina Code of Laws 1976, as amended, Section 20-7-780(B). Specifically, does this basic descriptive information include a photograph of the offender?

LAW / ANALYSIS

South Carolina Code Ann. Section 20-7-780(A) provides in pertinent part as follows:

[t]he official juvenile records of the courts and the Department of Juvenile Justice are open to inspection only by consent of the judge to persons having a legitimate interest but always must be available to the legal counsel of the juvenile. All information obtained and social records prepared in the discharge of official duty by an employee of the court or Department of Juvenile Justice is confidential and must not be disclosed directly to anyone, other than the judge or others entitled under this chapter to receive this information unless otherwise ordered by the judge. However, these records are open to inspection without the consent of the judge where the records are necessary to defend against an action initiated by a juvenile.

Subsection (B), however, provides that certain information regarding the juvenile is to be provided to the victim of a violent crime committed by the juvenile. That Subsection states:

(B) The Department of Juvenile Justice, if requested, shall provide the victim of a violent crime, as defined in Section 16-1-60, with the name and other basic descriptive information about the juvenile charged with the crime and with information about the juvenile justice system, the status and disposition of the delinquency action, including hearing dates, times, and locations, and concerning services available to victims of juvenile crime. 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. (emphasis added).

Subsection (C) is also pertinent to your inquiry. That subsection provides in relevant part as follows:

[t]he Department of Juvenile Justice may fingerprint and photograph a juvenile upon commitment to a juvenile

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correctional institution. Fingerprints and photographs taken by the Department of Juvenile Justice remain confidential and must not be transmitted to the State Law Enforcement Division, the Federal Bureau of Investigation, or another agency or person, except for the purpose of aiding the department in apprehending an escapee from the department, assisting the Missing Persons Information Center in the location or identification of a missing or runaway child, or except as otherwise provided in this section. (emphasis added).

Thus, the issue you present is whether a photograph of the juvenile constitutes "other basic descriptive information."

Several principles of statutory construction are pertinent here. Of course, the primary consideration in interpreting any statute is ascertaining the intention of the Legislature. Citizens and Southern Systems, Inc v. South Carolina Tax Comm., 280 S.C. 138, 311 S.E.2d 717 (1984). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used and that such language must be construed in light of the intended purpose. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). The statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948).

Moreover, words used in a statute must be given their plain and ordinary meaning. Snipes v. McAndrew, 280 S.C. 320, 313 S.E.2d 294 (1984). Furthermore, in determining legislative intent, the statute as a whole must be examined and construed together. Smalls v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987).

Finally, a statute should be construed so that all of its parts harmonize with each other and render them consistent with its general scope and object. Crescent Mfg. Co. v. Tax Comm., 129 S.C. 480, 124 S.E. 761 (1924). In that regard, where provisions appear to conflict with one another, the last legislative expression ordinarily governs. South Carolina Electric and Gas Company v. South Carolina Pub. Serv. Auth., 215 S.C. 193, 54 S.E.2d 777 (1949). Conflicts between general provisions and special ones are usually resolved in favor of the special provision, which will be deemed as an exception to the general one. Wilder v. S.C. State Hwy. Dept., 228 S.C. 448, 90 S.E.2d 635, 638 (1955).

It is evident that Section 20-7-780 has two distinct purposes. On the one hand, Subsection (A)'s purpose and that of confidentiality generally with respect to juvenile

records is to give the juvenile delinquent who responds to rehabilitation a "fresh start". Hayden v. State, 283 S.C. 121, 322 S.E.2d 14 (1984). This Office has stated that the purpose of the confidentiality statute is "to protect the juvenile from unnecessary public exposure" Op. Atty. Gen. No. 78-154 (August 15, 1978). Thus, by virtue of the reach of Section 20-7-780(A), Family Court records and Department of Juvenile Justice records relating to a juvenile are made confidential subject only to release in certain circumstances.

Fingerprints and photographs of the juvenile were singled out for specific treatment with respect to their confidentiality. In 1986, the General Assembly enacted Act No. 466 authorizing the Department of Juvenile Justice (then, Department of Youth Services) to photograph juveniles upon commitment to the Department and to "ALLOW THE DEPARTMENT TO FURNISH THESE PHOTOGRAPHS AND FINGERPRINTS TO LAW ENFORCEMENT AGENCIES AND THE MISSING PERSONS INFORMATION CENTER FOR CERTAIN PURPOSES ..." See, Title to Act No. 466. By this Act, however, release of such photographs and fingerprints was to "remain confidential information".

In 1990, the General Assembly recognized another important purpose--the necessity to provide certain information "about the juvenile charged with ... [a violent] crime" to the victim thereof. Thus by Act No. 418 of 1990, while the General Assembly reenacted those portions of Section 20-7-780 already in existence, the principal purpose of the Act was to create an exception to confidentiality so that the Department of Juvenile Justice could provide the victim upon request the juvenile's name "and other basic descriptive information" about the juvenile charged with the violent crime. One obvious purpose of such provision was to insure that the victim of a violent crime committed by a juvenile could have access to key "basic descriptive information" about the juvenile for safety and security reasons. Importantly, the General Assembly also restructured the statute to place in the same Subsection (B), immediately following the sentence giving the victim the right to access this information, the following sentence:

[t]he 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.

One further legislative change is relevant. By Act No. 7, Part I § 26 of 1995, Subsection (C) of Section 20-7-780 was amended to make clear the fact that the prohibition upon transmitting fingerprints and photographs to agencies or persons not specifically permitted in the Subsection was also subject to any other exception "provided in this section."

While arguments can be made to the contrary, it is my opinion that the better interpretation of the statute, in light of the intended purpose of the 1990 amendment, is that an identifying photograph of the juvenile is releasable to the victim of a violent crime committed by the juvenile. First of all, the language in Subsection (B) is broad in scope-- "basic descriptive information". Clearly, a photograph of the juvenile is "information". See, State ex rel. Times and Democrat, 276 S.C. 26, 274 S.E.2d 910 (1981). Moreover, the word "descriptive" normally means "having the quality of representing." Sawyer Stores v. Mitchell, 103 Mont. 148, 62 P.2d 342, 348 (1936). The word "describe" has been defined thusly:

... to delineate, depict, portray; to represent; to set forth; to explain; to narrate; to relate; to recount; to sketch; to express; to set out; to characterize.

26A C.J.S. "Describe" (emphasis added).

A photograph has been determined to constitute a "description". In Commonwealth v. Ross, 190 Pa. Super. 145, 152 A.2d 778, 783 (1959), the Court stated:

[t]he court did not err in characterizing the photograph of appellant, identified and selected by the victim from a number of photographs submitted to her by the police as a prior description given by the victim. To "describe" is "to represent by a drawing, statute or picture": Webster's Unabridged New International Dictionary, Second Edition. The court, therefore, did not err in stating to the jury that the picking out of the photograph constituted a good description.

Our own Supreme Court has also recognized that photographs or pictures constitute a "description". See, Holmes v. Black River Elec. Coop., 274 S.C. 252, 262 S.E.2d 875 (1980) [condition of plaintiff could be either described by words or pictures or a combination of the two].

Secondly, it is common sense that a photograph of the individual would constitute the best "basic descriptive information" available. It makes no sense to conclude that the Department could provide a written description contained in a record, no matter how specific, but could not provide the best description, an exact photographic likeness. The statute must be given a reasonable, practical and fair interpretation, consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., supra.

Third, the placement by the Legislature of the sentence regarding the prohibition against making public the "name, identity or picture of a child" by the media is indicative of legislative intent. The General Assembly's placement of this provision in the same section as and immediately following the sentence establishing the right of the victim to have access to descriptive information is suggestive that the Legislature had in mind inclusion of photographs of the juvenile in the information to be provided to the victim, while at the same time, not generally disseminating such information to the public.¹ This is consistent with the legislative purpose of aiding and assisting the victim of a violent crime committed by a juvenile.

Finally, the clarifying language recently inserted in Subsection (C) regarding photographs is also persuasive. The General Assembly has now specifically exempted from the prohibition against transmitting photographs of the juvenile not only circumstances where necessary to aid in apprehending an escapee, as well as the location or identification of a missing or runaway child, but also any other provision in Section 20-7-780 to the contrary. The insertion of such language further clarifies the legislative intent that a photograph of a juvenile may be released by the Department of Juvenile Justice to the victim of a violent crime. See, § 16-3-1530(B) [Victims' Bill of Rights gives victims right to protection from intimidation and harm].

Therefore, reading the statute as a whole, it appears that the specific provision relating to providing victims with descriptive information, which is later in time to Subsection (C) prohibiting transmission of photographs of a juvenile except in certain narrow circumstances, would prevail here. Because photographs of the juvenile would logically be included in the phrase "basic descriptive information", it would make little sense to conclude that such photographs would be excluded because of Subsection (C) where there is now found therein a sufficiently broad exception encompassing any exemption otherwise found in Section 20-7-780. Moreover, the very same types of safety interests explicitly recognized in Subsection (C) would also be present in Subsection (B) and would be furthered by providing a photograph to the victim of the juvenile committing a violent offense.

Thus, while juvenile records are clearly confidential pursuant to statute, it is my opinion that a juvenile's photograph falls within the exception "basic descriptive information" contained in Section 20-7-480(B), thereby requiring the Department of

¹In State ex rel. Times and Democrat, our Supreme Court declared the predecessor to Section 20-7-780 (Section 14-21-30) unconstitutional "insofar as [it prevents] ... the truthful publication by the media of information lawful obtained concerning a juvenile charged with a crime." 276 S.C. at 29.

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Juvenile Justice to provide such photograph to a victim of a violent offense committed by the juvenile upon request. Courts have held that juveniles have no constitutional right to the confidentiality of their files. U.S. v. Jiles, 658 F.2d 194 (3d Cir. 1981); McCrary v. Jeter, 665 F.Supp. 182 (E.D.N.Y. 1987) The Legislature thus may create such exceptions to confidentiality as it desires.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions 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 am

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

RDC/an