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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 27, 1996

The Honorable John Milton Knotts, Jr.
Member, House of Representatives
500 West Dunbar Road
West Columbia, South Carolina 29169

Re: Informal Opinion

Dear Representative Knotts:

You state that constituents in your district have contacted you in regard to receiving child support payments through the Clerk of Court Office. Further, you indicate that "[t]hese constituents are not DSS cases, they are citizens who have been divorced through the Family Court system, and their spouses were ordered to pay child support through the court." It has come to your attention "that people are being told that they must be on welfare for the law passed concerning Dead Beat Dads, to apply to their situation."

In other words, you are concerned that

> [t]hese people are having problems with the Dead Beat Dad's Law not being applied to their case in the same manner as applied to a person who is under the jurisdiction of the Family Court, but considered a DSS case.
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> The Dead Beat Dad bill that came through my committee and the House floor stated that their professional license or any type of license would be suspended if he does not pay his support payments. This law should apply to all dads and not just those listed as a DSS case. If this was the intent of the law, then it is of no avail.

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LAW / ANALYSIS

The "Dead Beat Dads" law which you make reference to in your letter is codified at S.C. Code Ann. Section 20-7-940 et seq. Section 20-7-940 states that "[i]n addition to other qualifications for holding a license, an individual who is under an order for child support also is subject to the provisions of this part." Section 20-7-942 states that

> [i]f a licensee is out of compliance with an order for support, the licensee's license must be revoked unless within ninety days of receiving notice that the licensee is out of compliance with the order, the licensee has paid the arrearage owing under the order or has signed a consent agreement with the division establishing a schedule of payment of the arrearage.

The Act defines a "[l]icensee" as "an individual holding a license issued by a licensing entity." A "licensing entity" "means, for the purposes of issuing or revoking a license, a state agency, board, department, office or commission that issues a license." An "order for support" is defined as

> ... an order being enforced by the division under Title IV-D of the Social Security Act and which provides for periodic payment of funds for the support of a child, whether temporary or final and includes, but is not limited to, an order for reimbursement for public assistance or an order for making periodic payments on a support arrearage. (emphasis added).

The so-called "IV-D" program of the Social Security Act, codified in Federal law at 42 U.S.C. § 651 et seq. established a child support program "for the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse with whom such children are living, locating absent parents, establishing paternity, [and] obtaining child and spousal support." See, McLaurin v. Cox, 1993 WL 394417 (Conn.Super. 1993). McLaurin describes the IV-D program and how it affects a mother who is not receiving AFDC benefits, but is in need of child support services this way:

> [a]lthough the mother in the present case does not receive AFDC benefits, she may apply for the IV-D services. The Social Security Act specifically states that a "state plan for child and spousal support must ... provide that ... the child support collection or paternity determination services established under the plan shall be made available to any individual

> not otherwise eligible for such service upon application filed by such individual with the State ... ." 42 U.S.C. § 654(6)(A). "Because, 'otherwise eligible' individuals are persons receiving AFDC an 'individual not otherwise eligible' is, by definition, a non-recipient of AFDC." ... Carter v. Morrow, 562 F.Supp. 311, 313 (1983). Therefore, "Title IV-D child support services are available to both AFDC and non-AFDC families ... ." Wehunt v. Ledbetter, 875 F.2d 1158 (11th Cir. 1989). In addition, "[t]he legislative history of Title IV-D reveals Congress' purpose in extending child support enforcement services to non-welfare families." Carter v. Morrow, supra. The Senate Finance Committee expressed that
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> > [t]he problem of nonsupport is broader than the AFDC rolls and ... many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents. Accordingly, the Committee bill would require that the procedures adopted for locating absent parents, establishing paternity, and collecting child support be made available to families even if they are not on the welfare rolls.

S.Rep. No. 1356, 93rd Cong., 2d Sess., reprinted in (1974) U.S. Code Cong. & Ad.News 8133, 8158. Also, the Senate Finance Committee, in its report on Congress' Amendment of the Social Security Act making permanent the 75% federal funding of IV-D Services to non-AFDC recipients, emphasized that

> [i]t believes that the requirement that every State have a program of child support collection and paternity establishment services for families that are not receiving welfare is an essential component of the child support program. The purpose of the requirement is to assure that abandoned families with children have access to child support services before they are forced to apply for welfare ... .

S. Rep. No. 336, 96th Cong.2d Sess. 77-78, reprinted in (1980) U.S. Code Cong. & Ad. News 1448, 1526-27. Hence, IV-D services are not limited to AFDC recipients.

And in South Carolina Department of Social Services v. Deglman, 290 S.C. 542, 351 S.E.2d 864 (1986), our own Supreme Court explained the IV-D program in addressing the question of whether DSS had standing to bring an action to establish a support obligation on the part of a mother for a sixteen-year old daughter. The father had assigned his child support rights to DSS. The Court of Appeals had held that DSS had no standing to bring the suit because Congress intended for DSS to make the IV-D program available to non-AFDC families only when certain conditions were met. One of the conditions which the Court of Appeals determined had to be met was that "the applicant is eligible for AFDC, or likely to need welfare if collection services are not made available." The Supreme Court rejected this conclusion, finding that the Social Security Act provides that individuals "whether or not eligible for AFDC, are to receive the same services as AFDC recipients." 290 S.C. at 545. Elaborating upon the purpose of the IV-D program, the Court stated further:

> In 1974, Title IV, Part D of the Social Security Act was amended by Congress to establish a Child Support Enforcement Program. The legislation requires each state to adopt a plan for providing designated services. Upon approval of the state plan, the federal government reimburses the state for a certain percentage of the costs that are incurred. This program primarily focuses on obtaining and collecting support for recipients of Aid to Families With Dependent Children (AFDC). Congress recognized, however, that often a family's dependence on AFDC in the first instance is caused by the failure of an absent parent to meet obligations ... . [citations omitted]
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> The Act plainly provides that "the child support collection or paternity determination services established under the [state] plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the state... ." 42 U.S.C. Sec. 645(6)(A) (Supp.1986). All services available to AFDC families are to be made available to non-AFDC applicants. Carter v. Morrow, 562 F.Supp. 311 (W.D.N.C.1983). Among the services that the state must provide to receive federal approval is establishment of the support obligation through the state courts or other legal process. 45 C.F.R. Secs. 302.5, 303.4 (1982); S.Rep. No. 1356, 93rd Cong., 2d Sess., reprinted in 1974 U.S.Code Cong. & Ad.News 8133,

> 8134; S.C.Code Ann., Vol. 27, Reg. 114-25-10(B)(1) (1981). (emphasis added).

Thus, by Federal law (as well as State law), the child support enforcement services including those enumerated in the "Dead Beat Dads" law referenced above, which are made available to AFDC recipients must also be made available to non-AFDC recipients. I am advised that the way this is currently accomplished is by making application at the local DSS office. I am further advised the application fee is only one dollar. I am also informed that applications can also be obtained through the clerk of court instead of the DSS office, if desired. Once application is made, the non-AFDC parent is to receive the same range of support services which an AFDC recipient receives.

Notwithstanding these protections and available options for non-AFDC spouses, your concern, however, is the fact that the "Dead Beat Dads" law as presently enacted does not provide a specific remedy for those spouses who choose not to participate in the IV-D program. You wish to know whether the Act would have to be amended and revamped to insure that those persons who do not wish to participate in the IV-D program (either through receipt of AFDC, or those non-AFDC cases who apply to DSS for participation in IV-D) have the same remedy of child support enforcement through license revocation as IV-D participants now have.

As I read Section 20-7-940 et seq., for a reason unknown to me, the law appears presently to relate only to those who participate in the IV-D program, either as AFDC recipients or as non-recipients who apply for IV-D coverage through DSS. As noted above, the term "[o]rder of support" is defined as "an order being enforced by the division under Title IV-D of the Social Security Act ... ." Section 20-7-940, while it makes payment of child support a qualification for holding a license, further states that such qualification is "subject to the provisions of this part." (emphasis added). Furthermore, Section 20-7-945(A) specifically reads ...

> (A) [t]he division [defined as DSS] shall review the information received pursuant to Section 20-7-944 and determine if a licensee is out of compliance with an order for support. If a licensee is out of compliance with the order for support, the division shall notify the licensee that ninety days after the licensee receives the notice of being out of compliance with the order, the licensing entity will be notified to revoke the licensee's license unless the licensee pays the arrearage owing under the order or signs a consent agreement establishing a schedule for the payment of the arrearage. (emphasis added).

Thus, as you and I have discussed, the "Dead Beat Dad's" law, as the statute is presently written, appears to require participation in the IV-D program in order to take advantage of the license revocation law remedy.

At least two other options are available, however. As you are aware, many of the professional licensing laws make "good moral character" a qualification for licensure. Courts have equated a lack of "good moral character" with a wilful failure to pay child support. As was said in Petition of Perdiak, 162 F.Supp. 76, 77 (D.C. Cal. 1958),

> [i]t is the essence of good moral character that if a person be a parent of minor children, the person must recognize the parental obligation and, insofar as capable, make provision for the support and welfare of the minor or children ... .
>
> > "... By every law, natural, human, moral and divine, he is obligated to protect, support and care for them. Nothing excuses failure to discharge this obligation, and no man who evades it is of good moral character ... ."

And, more recently, in Feeney v. Colorado Limited Gaming Control Commission, 890 P.2d 173 (Col. 1994), the Court stated with respect to a gaming licensure law which required the licensee to be of "good moral character" and that his prior habits and reputation etc. not pose a threat to the "public interests of the state", that "[w]e reject Feeney's arguments that such conditions [revocation of a license for failure to pay child support] result in extra-judicial enforcement of a child support order and are not rationally related to the suitability of the licensee or the legislative purposes of the Limited Gaming Act." Thus, the Gaming Authority "... acted within the scope of its statutory authority to determine that prompt payment of child support and taxes is in the public interest of the state." 890 P.2d at 175. Accordingly, it would appear at least possible that, where an obligor in default of his child support obligation, holds a professional license, a complaint could still be filed with the licensing board itself (where the licensing law requires "good moral character" as a qualification for licensure), on the ground that the licensee lacks "good moral character", notwithstanding the limitations of the "Deadbeat Dads" law.

The second option is the legislative amendment of the "Deadbeat Dad's" law, itself, which you indicate you favor. I see no legal problem whatever in amending the law to insure that those who do not choose to participate in the Section IV-D program are also included in the license revocation remedy.

A number of other states which I have surveyed do not limit their license revocation program simply to participants in the IV-D program, but include everyone. For example, many states provide that the matter is one within the domain of the Family Court and if the Court finds that the obligor is in default of his or her child support obligation, it will order the licensing agencies (highway dept., professional licensing agencies, etc.) to revoke the license or to hold a hearing to revoke the license. There is, in other words, little or no distinction made in such statutes between IV-D cases and non-IV-D cases.

For example, the North Carolina statute works this way. N.C. St. §50-13.12(b) provides as follows:

> [u]pon a finding by the district court judge that the obligor is willfully delinquent in child support payments equal to at least one month's child support, and upon findings as to any specific licensing privileges held by the obligor, the court may revoke some or all of such privileges until the obligor shall have paid the delinquent amount in full. The court may stay any such revocation upon conditions requiring the obligor to make full payment of the delinquency over time. Any such stay shall further be conditioned upon the obligor's maintenance of current child support. Upon an order revoking such privileges that does not stay the revocation, the clerk of superior court shall notify the appropriate licensing board that the obligor is delinquent in child support payments and that the obligor's licensing privileges are revoked until such time as the licensing board receives proof of certification by the clerk that the obligor is no longer delinquent in child support payments.

The only distinction between IV-D and non-IV-D cases which I find in the North Carolina statute is as follows:

> [t]he clerk of court in a non-IV-D case, and the child support agency in a IV-D case, shall accept a drivers license required to be given the court under this subsection.

This distinction is not significant, however. Thus, this specific approach, and so far as I can tell, that employed by many other states, does not limit the accessibility of the license revocation process for any obligor's failure to pay child support only to IV-D

participants, but instead makes the same procedure available to all obligees of child support payments regardless of whether or not they participate in the IV-D program.

A somewhat similar approach is employed by the State of Arizona. Arizona's license revocation program is summarized by one expert as follows:

> [a] petition to enforce overdue child support triggers [the law] ... . The law allows "any person, agency, or entity providing support for a child or having physical custody of such child" to file the petition ... . The superior court judge initially determines the non-custodial parent's arrearage in court-ordered child support ... . If the parent is one month or more behind in payments and has or is seeking a professional license, the court may order the appropriate licensing board to hold a hearing concerning license suspension ... . Within thirty days of the court order of the board must hold a hearing to determine whether the non-custodial parent is licensed and is behind on child support payments ... . If the individual fails to pay arrearages in full before the hearing, the board must either suspend the individual's license or place the individual on probation ... . Before the board can lift the suspension, terminate probation, or issue a new license, the individual must comply with all court-ordered payments.

Nicholas, "Collecting Child Support From Delinquent Parents: A Constitutional Analysis of an Arizona Enforcement Mechanism," 34 Ariz. L. Rev., 163, 166 (1992). Thus, the difference between this approach and that of a state such as North Carolina is that the Court orders the licensing agency to hold a license revocation hearing, instead of itself holding the hearing and ordering the agency to revoke the license.

The Arizona statute has been upheld as constitutional in at least one case. In Flores v. Bd. of Psychologist Examiners, No. CV 90-33689 (Ariz. Super. Ct. April 24, 1991), the Court found the statute valid because "'[i]t is without question in the State's best interest to protect the welfare of its children by enacting legislation which enforces a parent's legal and moral obligation to support his or her minor children.'" Moreover, the Court determined the statute was rationally related to professional character and fitness because "'[i]f a professional is inclined to financially abandon her own flesh and blood, it is not unrealistic to assume that this same professional would turn away from her own client for little to no justification.'" Nicholas, supra at n.4, p.185.

Thus, as you can see there is a wide variety of statutory models which assist in your goal of amending the "Deadbeat Dad's" law, to insure that non-participants in the IV-D program who as a matter of choice do not wish to go through DSS, may have access to the licensure revocation program provided by the "Deadbeat Dads" law. Nothing is more important than insuring that the child support which is owed, is paid. Clearly, the threat of license revocation is an effective way of compelling that the obligation to support ones children is met. I would suggest that you inquire of Legislative Council or other legislative staff to assist you in drafting the type of legislation which would meet your purposes.[1] I will be happy to answer any additional questions you may have.

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/ph

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[1] My only caution in this area is to avoid the creation of a dual system (one for IV-D cases, the other for non-IV-D) to the extent possible. See, Carter v. Morrow, supra. In Carter, the Court emphasized that " ... Congress clearly intended for non-recipients of AFDC to receive the same IV-D services as AFDC recipients [subject to certain limitations, not relevant here] ... Congress did not intend for the states to provide non-welfare families only 'some' of the IV-D services, or to attempt, under federal supervision, to achieve 'comparable' results for these families through means other than those used in AFDC cases." Thus, any revamping of the enforcement provision must meet the Social Security Act standards so as not to jeopardize IV-D funding. Accordingly, I would suggest that you or staff consult with the appropriate Social Security Administration officials to insure that funding is not threatened. A system such as I have outlined utilized by states, such as North Carolina and Arizona, makes no real distinction between IV-D and non-IV-D cases because all license revocation cases are initiated through the Family Court. Of course, this Office herein makes no comment with respect to any preference of a particular type of enforcement program.