

The State of South Carolina



Office of the Attorney General

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June 22, 1990

The Honorable James L. Solomon, Jr.
Commissioner, South Carolina Department
of Social Services
P. O. Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

You have written requesting an interpretation of South Carolina Code Ann. § 20-7-510(A) which requires that certain occupations or professions report suspected child abuse or neglect. You wish an opinion on whether these individuals are required to report possible child abuse or neglect when information is learned in the context of their private lives, unconnected with professional job duties.

Ordinarily, the common law imposes no duty on a person to act. An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other circumstance.

Jensen v. S. C. Dept. of Social Services, 297 S.C. 111, 377 S.E.2d 102 at 105 (S.C. App. 1988). However, pursuant to South Carolina Code Ann. § 20-5-510(A)

Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical, mental health or allied health professional, Christian Science practitioner, religious healer, school teacher or counselor, social or public assistance worker, child care worker in any day care center or child caring institution, police or law enforcement officer or any judge having reason to believe that a child's physical or mental health or welfare has been or may be

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adversely affected by abuse or neglect is required to report or cause a report to be made in accordance with this section. (Emphasis added).

Also, South Carolina Code Ann. § 20-7-520 states that

(a)ny person required under subsection (A) of § 20-7-510 to report cases of suspected child abuse or neglect, including workers of the local child protective service agency, who has reason to believe that a child has died as result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner.

South Carolina Code Ann. § 20-7-20 establishes as policy for this State the prevention of children's problems and protection of children from harm. It also provides that

(t)he State shall encourage community involvement in the provision of children's services including, as an integral part, local government, public and private voluntary groups, public and private nonprofit groups and private-for-profit groups in order to encourage and provide innovative strategies for children's services. South Carolina Code Ann. § 20-7-20 (C). (Emphasis added).

The Legislature of this State has also declared that the purpose of the article relating to child abuse and neglect is to save abused and neglected children

from injury and harm by establishing an effective reporting system and encouraging the reporting of children in need of protection; by establishing an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate; by establishing fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members and by establishing an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.

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The individuals who are required to report instances of possible child abuse or neglect or who participate in any judicial proceedings resulting from the report and who act in good faith are immune from liability, South Carolina Code Ann. § 20-7-540, and are deemed guilty of a misdemeanor and fined or imprisoned upon a knowing failure to report. South Carolina Code Ann. 20-7-560. According to South Carolina Code § 20-7-550

(t)he privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client or priest and penitent, is abrogated and shall not constitute grounds for failure to report or the exclusion of evidence in any civil child protective proceeding resulting from a report pursuant to this article. (Emphasis added).

A reading of the statutes discussed above reveal a legislative goal which would be consistent with an interpretation of South Carolina Code Ann. § 20-7-510(A) requiring the individuals listed in that statute to report instances of suspected child abuse and neglect in any and all circumstances. This Office agrees that the statutes appear to have been designed to reach individuals who, in the course of their professions, might be more likely than the general public to obtain and recognize indications of child abuse or neglect. Had the legislature intended to limit the reporting requirement to information obtained only in the course of employment, it could easily have done so as have the legislatures of other states. See D. M. Hoester, 681 S.W.2d 449 (Mo. 1984); See e.g.; California Ann. Penal Code § 11166; Ohio Revised Code § 2151.421. While there may be a public policy argument favoring protection of confidential communication gained in a volunteer capacity from possible perpetrators or those with knowledge in order to foster counseling and treatment, South Carolina Code Ann. 20-7-550 which abrogates any privileged communication except attorney and client or priest and penitent indicates that this State has chosen as paramount the mandatory disclosure to prevent harm to children. See; Id.; People v. Cavaiani, 172 Mich. App. 706, 432 N.W.2d 409 (1988). See also 44 A.L.R. 4th 649. It is therefore the opinion of this Office that the reporting mandates of South Carolina Code Ann. § 20-7-510(A) is not limited to information gained in the course of employment and that individuals engaged in the occupations or professions listed in the statute are required to report instances of suspected child abuse or neglect regardless of the source of the information or capacity in which it is received.

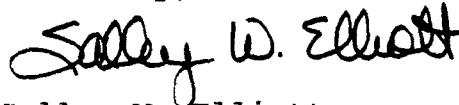
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I hope this clarification will prove helpful. I am also available to discuss the matter in detail if you desire.

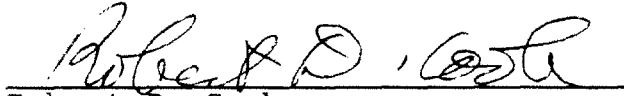
Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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