1984 S.C. Op. Atty. Gen. 207 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-86, 1984 WL 159893

Office of the Attorney General

State of South Carolina
Opinion No. 84-86
July 25, 1984

***1 Re: Commitment Orders and the 'Save the Children' Program**

Hon. Harry W. Davis, Jr.
Commissioner
Department of Youth Services
P. O. Box 7367
Columbia, South Carolina 29202

Dear Mr. Davis:
You have asked for an opinion of this Office as to whether or not a family court judge in an order committing the juvenile to the custody of the Department of Youth Services (hereafter DYS) can also order the Department to enroll the juvenile in the 'Save the Children' Program, a program involving adult South Carolina inmates that is not under the control of DYS nor endorsed by the DYS staff. It is our opinion that the court can recommend participation in this program as part of its commitment order, but that recommendation is not binding on either the juvenile or DYS when the juvenile is committed to DYS.

The family court, like a circuit court, has no inherent power to commit a juvenile to DYS and may not do so without statutory authorization. State v. Hord, 8 S.C. 84 (1876); Ex Parte Leeke, 257 S.C. 82, 184 S.E.2d 80 (1971). The dispositional powers of the family court at Section 20–7–1330, CODE OF LAWS (1976), include:
(b) Commit the child to the custody or guardianship of a public or private institution or agency authorized to care for children or to place them in family homes, or under the guardianship of a suitable person. Such commitment shall be for an indeterminate period, but in no event shall continue beyond the child's, twenty-first birthday.

Clearly, DYS is 'a public institution or agency authorized to care for children' under the Children's Code. It is equally clear that the 'Save the Children' Program does not qualify. See Article XII, Section 3, of the SOUTH CAROLINA CONSTITUTION (separate confinement of juvenile offenders from older confined persons). Therefore, commitment to DYS is statutorily authorized and the 'Save the Children' Program is not authorized.

Under Section 20–7–2170, a juvenile under the jurisdiction of the family court 'may be committed to the custody of the Board of Youth Services only by order of a circuit of family court judge under procedures and subject to the conditions set forth . . ..' The General Assembly has not established as a statutory condition of a juvenile commitment participation in the 'Save the Children' Program. Instead, the General Assembly vested the Board of Youth Services, 'from the time of lawful reception . . . and during his stay in custody in a correctional institution operated by the Department' with the 'exclusive care, custody and control' of the juvenile. Section 20–7–2180 CODE OF LAWS (1976). In addition, the legislature required the Board 'to make available instruction in such branches of useful knowledge as may be suited to his years and capacity that will enable such child to learn a useful trade.' Section 20–7–2190, CODE OF LAWS (1976).

The legislature further has not mandated the 'Save the Children' Program as an institutional service to be provided under law. Compare: Section 20–7–3230, CODE OF LAWS (1976). Since it is not a required institutional service as determined by the General Assembly, DYS is not required by law to utilize the 'Save the Children' Program.

***2** A family court's direction in a commitment to DYS to involve the juvenile in an outside program during his commitment is closely analogous to a judge's direction of a particular place of confinement. See: Bell v. Leeke, 225 S.E.2d 188 (S.C. 1976). If viewed as mandatory, rather than a recommendation, it would place in the family court the jurisdiction to manage the internal details of how DYS will attempt to control and rehabilitate juveniles. See: State ex rel. Dept. of Health and Rehab. Services v. Nourse, 437 So.2d 221 (Fla. App. 4 Dist. 1983). See also: In the Matter of A.N.M., 542 S.W.2d 916 (Tex. 1976); Heustis v. Sanders, 320 S.W.2d 602 (Ky. 1959). The General Assembly has, however, placed the 'exclusive care, custody and control' of committed juveniles, not with the family court, but clearly and unambiguously with the Board of Youth Services. Section 20–7–2180, CODE OF LAWS (1976). Therefore, it is my opinion that any direction in a family court order that included enrollment in a non-DYS sanctioned 'Save the Children' Program was merely precatory and not mandatory upon DYS. Bell v. Leeke, supra.

It must be noted, however, that since the issue presented concerns an order of a court, the risk of being held in contempt of court is present and acting upon advice of counsel is no defense to contempt of court if counsel's interpretation is subsequently found to be erroneous. Therefore, consultation and dialogue with the family court is urged to develop an understanding of your concerns about the program to resolve the dilemma of a potential conflict and insure that the best interest of the juvenile and the State are protected.

Sincerely,

Donald J. Zelenka
Deputy Attorney General

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