

1983 WL 182047 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 2, 1983

*1 N. Gruber Sires, Jr., Esquire
Oconee County Public Defender
Post Office Box 1277
Seneca, South Carolina 29678

Dear Mr. Sires:

This is in response to your request for an opinion dated June 17, 1983. As I understand from our telephone conversation, your office is not currently representing an individual in a case giving rise to this request.

Your request specifically addresses the portion of Section 21-21-10, South Carolina Code Ann. (Supp. 1982), which states: '[N]either party shall forcibly take a child from the guardianship of the parent legally entitled to its custody.'

The statute has been interpreted on several occasions. In [Graydon v. Graydon](#), 150 S.C. 117, 147 S.E. 749 (1929), the court ruled that Mrs. Graydon violated the terms of the statute now embodied as § 21-21-10. The court stated that the statute simply put into statutory language that which had been the practice of the courts for many years—that is that the welfare of the child shall be the prime consideration of the courts.

In [Simmons v. Simmons](#), 41 F.Supp. 545 (D.C.S.C. 1941), the federal courts were called upon to apply state law to a situation where the mother 'forcibly took' the couple's four-year-old son to Florida. The court quotes this particular statute, but refuses to recognize a cause of action for money damages arising from the mother's violation of the terms of the statute.

In [Simmons](#), the court construes the language '... the wife and husband (now mother and father) shall have equal power, rights and duties, and neither parent has any right paramount to the right of the other concerning custody of a child ...' to say that neither parent, in the absence of judicial determination, has any absolute right to custody. *Id.*, at 547.

Furthermore, the Attorney General issued an opinion in 1956 construing the pertinent provisions of the statute. This opinion is enclosed for your information.

In conclusion, § 21-21-10 standing alone has no penalty provisions. Therefore, it is questionable whether criminal action could be instituted based on this statute standing alone.

Sincerely,

Agnes Dale Moore
State Attorney

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