

1977 S.C. Op. Atty. Gen. 96 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-110, 1977 WL 24452

Office of the Attorney General

State of South Carolina

Opinion No. 77-110

April 18, 1977

***1** UNDER THE CURRENT STATE OF THE LAW IN SOUTH CAROLINA AND IN THE UNITED STATES IT IS UNCLEAR WHETHER SPOUSAL CONSENT IS REQUIRED BEFORE A COMPETENT, CONSENTING ADULT CAN BE VOLUNTARILY STERILIZED.

TO: Senator Harry A. Chapman, Jr.

QUESTION PRESENTED:

Is it necessary in South Carolina for a husband or wife to consent to the voluntary sterilization of his or her spouse?

CITATION OF AUTHORITIES:

Statutes: § 32-671-32-680, Code of Laws of South Carolina (1962).

Cases: Coe v. Bolton, No. C-76-785A (N.D. Ga., September 30, 1976); Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973); Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788 (1976); Ponter v. Ponter, 135 N.J. Super. 50, 342 A. 2d 574, (1975); Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

Miscellaneous:

58-59 Op. Att'y Gen. 224, June 19, 1959.

DISCUSSION:

Your inquiry as to whether it is necessary for a husband or wife to consent to the sterilization of his or her spouse presents an issue which has heretofore not been addressed by either the South Carolina General Assembly¹ or the South Carolina Supreme Court. An advisory opinion issued by this Office on June 19, 1959, 58-59 Op. Att'y Gen. 224, which stated that 'the performance of the operation of a vasectomy or salpingectomy by a surgeon upon a mentally competent adult, with the full and complete understanding consent of the patient, is not a crime under the laws of this State', appears to be the only discussion of this problem in South Carolina. Thus, in the absence of a legislative or judicial manifestation of public policy on this issue, I can only advise you as to the current trend of the law in this area.

The primary case on this issue is Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 96 S. Ct. 2831, 49 L. Ed. 2d 788, which was decided by the United States Supreme Court on July 1, 1976. In that case, the United States Supreme Court held that a Missouri statute, which required the prior written consent of the spouse before a woman could obtain an abortion during the first twelve weeks of pregnancy, was unconstitutional. The Court stated: 'Clearly, since the State cannot regulate or proscribe abortion during the first state, when the physician and his patient make that decision, the State cannot delegate authority to any particular person, even the spouse, to prevent abortion during that period.' 96 S. Ct. at 2841.

Although one may argue that spousal consent for sterilization should be treated differently since it will effectively prevent the particular couple from even having a child, whereas abortion merely terminates a single pregnancy, other courts have applied the reasoning of Danforth, supra, to sterilization.

The Superior Court of New Jersey, Chancellor Division, in Ponter v. Ponter, 135 N.J. Super. 50, 342 A. 2d 574, (1975), held that a married woman has a constitutional right to obtain a sterilization operation without the consent of her husband. Notwithstanding the fact that this case was decided prior to Danforth, supra, the rationale of the New Jersey Court is still valid since its decision was based on the cases of Doe v. Bolton, 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed. 2d 201 (1973), and Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973), two cases upon which the United States Supreme Court relied heavily in their decision in Danforth, supra.

*2 In Coe v. Bolton, No. C-76-785A (N.D. Ga. Sept. 30, 1976), a three-judge panel issued a permanent injunction against the spousal consent requirements of Georgia's Voluntary Sterilization Act. Although the decision was based mainly on the fact that the Georgia law violated the Equal Protection Clause of the Fourteenth Amendment in that the law applied only to married persons, the Georgia Court also cited Danforth, supra, for the proposition that public policy in favor of mutuality in marriage would not sustain the spousal consent requirement.

CONCLUSION:

In view of the fact that there has been no manifestation of public policy by either legislative act or judicial decision as to whether spousal consent is required before a competent, consenting adult can obtain a voluntary sterilization for convenience or contraceptive sterilization, it is unclear whether such prior spousal consent is required. However, it is the opinion of this Office, in light of the recent trend of judicial decision on this point, that spousal consent is not required; however, this conclusion is not without doubt absent precedential authority in this jurisdiction.

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Footnotes

- 1 Sections 671-680 of Title 32 of the Code of Laws of South Carolina (1962) is the only statute concerned with sterilization, but this statute is not applicable here since it deals with involuntary sterilization of inmates in penal or charitable institutions who are afflicted with any hereditary form of insanity which is recurrent idiocy, imbecility, feeble-mindedness or epilepsy.

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