1977 S.C. Op. Atty. Gen. 288 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-364, 1977 WL 24702

Office of the Attorney General

State of South Carolina
Opinion No. 77-364
November 14, 1977

***1** TO: Alvin C. Biggs
Assistant Solicitor
First Judicial Circuit
Orangeburg, South Carolina

QUESTION PRESENTED:

Is it possible for the family court, in its discretion, to continue to transfer a juvenile 16 years of age or older pursuant to Section 14–21–540 Code of Laws of South Carolina (1976)?

AUTHORITIES:

Lewis v. Gaddy, 254 S.C. 66, 173 S.E. 2d 376 (1970);

State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972);

State ex rel. McLeod v. Mills, 256 S.C. 21, 80 S.E.2d 638 (1971);

Section 14–21–540 Code of Laws of South Carolina (1976);

Section 14–21–510;

Art. II, Section 2, Act No. 690, 1976 Acts and Joint Resolutions 1859;

Art. III, Section 1B, Act No. 690, 1976 Acts and Joint Resolutions 1859;

Black's Law Dictionary;

21 CJS, Courts, Section 18.

DISCUSSION:

Your inquiry raises the question of the validity of Section 14–21–540, Code of Laws of South Carolina, 1976 which allows for the transfer under certain conditions of a child sixteen years of age or older and charged with an offense which would be a misdemeanor or felony if committed by an adult to any court which would have trial jurisdiction of such offense if committed by an adult. The apparent challenge to the validity of Section 14–21–540 arises from a conflict between the exclusive jurisdiction language of Art. II, Section 2 of Act No. 690, 1976 Acts and Joint Resolutions 1859 which went into effect July 1, 1977, and the unlimited ability of the family court to relinquish jurisdiction to any court with trial jurisdiction of the offense if committed by an adult. The two positions may appear, on their face, inconsistent and irreconcilable, however, it is the opinion of this office

that Section 14–21–540 can co-exist with Act No. 690, 1976 Acts and Joint Resolutions 1859 and retain its validity for the following two reasons.

First, Section 14–21–510 Code of Laws of South Carolina (1976), Act 1195 (1968) provides that, 'the court shall have exclusive original jurisdiction and shall be the sole court for initiating action'. Exclusive original jurisdiction differs from simple exclusive jurisdiction. Exclusive jurisdiction is generally defined as 'jurisdiction confined to a particular tribunal and possessed by it to the exclusion of all others'. 21 CJS, Courts, Section 18. Original jurisdiction is defined as 'jurisdiction in the first instance or jurisdiction to take cognizance of a cause at its inception'. Black's Law Dictionary. The combination of both equals the phrase, 'exclusive original jurisdiction' which is used to define the jurisdiction of the family court, the exclusive jurisdiction to initiate an action.

The jurisdiction defined above is set forth in Act 1195 of 1968 relating to the family court and is referred to in Art. II, Section 2 of Act No. 690, 1976 Acts and Joint Resolutions 1859. The more recent act concerning the family court conveys the same exclusive original jurisdiction on the family court as it had under the 1968 Act with a proviso that, 'the offenses of murder and rape committed by persons under the jurisdiction of the family court shall be transferable to the circuit court . . .'. The transfer as set forth under Art. III, Section 1B of Act No. 690 serves in effect to diminish the exclusive original jurisdiction otherwise bestowed on the family court by vesting the circuit court with the ultimate decision of exercising and asserting jurisdiction of the court of general sessions or of relinquishing jurisdiction to the family court. For this reason it was necessary to place the proviso concerning the offenses of murder and rape in the jurisdiction section of the act. However, there is no express proviso for the transfer of certain other criminal cases as provided for under Section 14–21–540, Code of Laws of South Carolina (1976) since there is no conflict with the exclusive original jurisdiction of the court. Section 14–21–540 gives the family court the sole control of initiating the action; the court may, however, in its discretion bind over a child to any court which would have trial jurisdiction of such offense if committed by an adult, but the original jurisdiction is in the family court and no court has the authority to take jurisdiction absent an act of voluntary relinquishment by the family court.

***2** The second reason for the continued validity of Section 14–21–540 is because the section has not been repealed. A statute may be repealed either of two ways, by express terms or by implication. State ex rel. McLeod v. Mills, 256 S.C. 21, 180 S.E.2d 638 (1971). It is clear from a careful reading of Act No. 690 that Section 14–21–540 has not been expressly repealed. To determine whether a statute has been repealed by implication requires a careful analysis of all the statutes concerned. Under the law in South Carolina and the rules of statutory construction, repeal by implication is not favored; an act should not be construed as impliedly repealing a prior act unless no other reasonable construction can be applied. State ex rel. McLeod v. Ellisor, 259 S.C. 364, 192 S.E.2d 188 (1972). Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). The previous discussion presents a reasonable construction of the statutes sufficient, in our opinion, to withstand an allegation of repeal by implication.

CONCLUSION:

It is the opinion of this Office that Section 14–21–540, Code of Laws South Carolina (1976), Act 1195 (1968) is not repealed expressly or impliedly by Act No. 690, 1976 Acts and Joint Resolutions 1859. The exclusive jurisdiction given to the family court by Act No. 690 is not interfered with by the continued existence of Section 14–21–540 because the family court has exclusive original jurisdiction over all matters transferable under that section.

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