

1976 WL 30678 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 In light of the purposes of the adoption statutes and the authority to issue governing policies, the Children's Bureau does not breach the statutory mandate of confidentiality by pursuing a policy of disclosure of non-identifying information to adult adoptees.

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Executive Director
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QUESTION PRESENTED:

Whether, in light of general enabling legislation and of Section 10-2587.14(c) of the 1962 Code, the Children's Bureau of South Carolina may provide adult adoptees with non-identifying adoption information?

STATUTES, CASES, ETC., INVOLVED:

South Carolina Code: Section 71-201 et seq of the 1962 Code Section 71-231 et seq of the 1962 Code Section 10-2587.14 of the 1962 Code, as amended.

Cases: [Galloway v. Galloway](#), 153 SE2d 326, 247 S.C. 157, (1967) [Roe v. Wade](#), 410 US 113, (1973).

Opinions: 1955-56 Op. Atty. Gen. 77

Reference: [1 Am Jur2d](#), 'Administrative Law', Section 96

Law Review: 'The Adult Adoptee's Constitutional Right to Know His Origins,' 48 Southern California Law Review, 1974-75.

DISCUSSION:

The legislation creating the Children's Bureau is found at Section 71-201, et seq. of the 1962 Code. That legislation, at Section 71-205, directs that the Bureau will serve as the guardian of '. . . all destitute, dependent, neglected or delinquent children committed to its care . . .', '. . . Place such children in private homes . . .' and when necessary and appropriate, consent in loco parentis to adoptions. Under Section 71-201.2, the Board of Directors is authorized to '. . . prescribe such policies and administrative duties as are necessary for the proper governing of the Children's Bureau . . .' (emphasis added). It should be noted that the enabling statutes make no reference to authorization for the promulgation of rules and regulations, per se. The Children's Bureau is specifically exempted from the provisions of Section 71-231, et seq. relating to other child welfare agencies. See Section 71-232(2).

The State's present adoption legislation is set forth at Section 10-2587.1, et seq., as amended. Section 10-2587.14 pertains to the confidentiality of, and access to, adoption records. Sub-section 'a' provides that all hearings under the adoption article shall be confidential and held in closed court. Sub-section 'b' relates to the papers and records of the adoption. By that sub-section's terms, the papers and records before the court shall be sealed, kept as a permanent court record, and withheld from inspection

except upon an order for good cause shown by the judge of the court which entered the adoption decree. Finally, sub-section 'c' directs that all files and records relating to adoption proceedings in the Children's Bureau ' . . . shall be confidential and withheld from inspection except upon order of court for good cause shown.'

Under the facts as presented, the Children's Bureau has adopted a policy allowing the distribution of certain non-identifying information to adoptees in certain situations. The Board of Directors reaffirmed this commitment as late as October 8, 1975. The policy statement offers no formal definition of non-identifying but indicates that the information is more or less freely distributed to 'grown adoptees.' In the matter of Thomas Abner Harrington, counsel for the adoptive mother has indicated that the Children's Bureau informed the adoptee ' . . . that his Mother was a nurse and that his Father was a Sergeant'. See: Correspondence to Mrs. Josephine Cannon, dated November 11, 1975. It is notable that adoptee Harrington is now twenty-seven years of age.

*2 It is assumed, arguendo, that the non-identifying information thus distributed is gleaned from the agency's own records, and not from the Court adoption hearing or the Court records. Thus, the question becomes: Whether in light of the language of Section 10-2587.14(c), the Children's Bureau may properly distribute non-identifying information to an adult adoptee?

In broad terms, the South Carolina Supreme Court has recognized four interested parties in the adoption process: 1) the minor child 2) the parents or those standing in the place of the parents, 3) the party seeking to adopt, and 4) the State. Galloway v. Galloway, 153 S.E.2d 326, 249 S.C. 157 (1967). (Emphasis added). Obviously, the highest, most protected interest is that of the child. Galloway, 153 S.E.2d, 328 249 S.C., 161. Also see: 1955-56 Op. Atty. Gen. 77. As regards the State's interests, the following has been posited:

- a. The State seeks to protect the adoptive family from outside interference;
- b. The State seeks to protect the natural sensitivity of the adoptive parents that the child will later abandon them; and
- c. The State seeks to provide the natural parent with anonymity in order to assure that, where appropriate, the child will be put up for adoption.

'The Adult Adoptee's Constitutional Right to Know His Origins,' 48 Southern California Law Review 1196, 1974-75.

With respect to Section 10-2587.14(c), the Children's Bureau does not appear to allow inspection of files and records pertaining to proceedings. The impermissibility of actual inspection, in the absence of an ' . . . order of court for good cause shown . . . ' appears unavoidable under sub-section 'c'.

The Children's Bureau must have sufficient flexibility to ensure that the purposes of the adoption statutes, as set forth above, are served. Moreover, the Bureau's Board does have the statutory authority to adopt policies for the proper governing of the Bureau. See Section 71-201.2 of the 1962 Code. Some authority argues that these policies reach the level of rules and regulations. 1 Am Jur2d, 'Administrative Law', Section 96. This opinion however, does not address that argument or the question whether in the absence of lawful promulgation and filing with the Secretary of State, such policies could be considered as administrative rules and regulations.

Thus, the Children's Bureau is left with the power to adopt operation policies. Can the information policy adopted be rationalized with the commands of Section 10-2587.14(c) which requires 1) confidentiality and 2) non-inspection in the absence of a court order for good cause shown?

As the purposes of the adoption statutes have been preferred, the purposes of the Children's Bureau is primarily to secure the best interests of the adoptive child. Interests of natural and adoptive parents and of the state are secondary.

In Roe v. Wade, the Supreme Court indicated that the point of balance between an individual's privacy interest and interests of the State may vary as circumstances change. 410 US 113, 35 LEd2d 147, 93 S.Ct. 705 (1973). Thus, as the policies on behalf of the State and the involved parents decrease, as with the increasing age of the child, the adoptee's rights become even more controlling. Of course, where a fundamental right is involved, that right will fall only to 'compelling' state interests.

*3 Continuing, it can be said that the reference in Section 10-2587.14(c) to confidentiality does not dictate absolute secrecy. The above law review article put is as follows:

It does not follow that confidentiality necessarily implies secrecy with respect to all aspects of the (adoptive) relationship. It is reasonable to expect that the information will be used to promote the purposes of the confidential relationship. The purpose of the adoption process is to provide for the welfare of the adoptee, and the state and its agencies are guided by what are considered to be '... the best interests of the child.' See e.g., In Re: Adoption of Perkins, 49 NW2d 248, 250; 248 Iowa 1374, 1379 (1951). 48 Southern California Law Review 1196, 119

The same reasoning lends itself to the pre-interview analysis which the Children's Bureau makes of the agency's case record, as well as to the post-adoption requests for information. As Mrs. Cannon stated in her letter of November 24, 1975, the adoptee and the adoptive parents are refused access to the record. Nevertheless, the Executive Director reviews the file, makes notes, shares proper information, and then makes a record of the information shared.

These accommodations are reasonable and necessary administrative applications of the Section 10-2587.15(c) proscription and are properly implemented by administrative policy. Further, the information thus selectively disseminated serves the best interest of the adult adoptee, is essential for the adoption process to work at all and, inasmuch as it is non-specific and non-identifying information, does not reasonably encroach upon policies owed to the natural and adoptive parents of an adult adoptee.

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