

1978 WL 35215 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 10, 1978

**\*1 Re: [Smith v. Organization of Foster Families](#), 431 U.S. 816, 53 L.Ed.2d 14, 97 S. Ct. 2094 (1977)**

Mr. Virgil L. Conrad  
Commissioner  
South Carolina Department of  
Social Services  
P. O. Box 1520  
Columbia, SC 29202

Dear Mr. Conrad:

This is in reply to your inquiry of October 5, 1978, with reference to the above-captioned case. In your letter you asked whether or not the Department of Social Services was required to provide foster parents with a hearing when the agency decides to remove a child from their home when custody of the child has been granted to the agency by court order. The Smith case dealt with the validity of the New York statutes concerning removal of a child under circumstances similar to those pointed out in your letter. The case however, does not hold that a hearing is constitutionally mandated as the case is narrowly applied on the question as to whether or not the New York statutes were constitutionally valid. Let me reemphasize that the case does not require that a hearing be held prior to removal, whether the removal be from a foster home to another foster home, or from a foster home back to the home of the natural parents.

If a constitutional principle under the Federal Constitution had been announced by the Court in this case, then unquestionably that principle would apply to the State of South Carolina; however, the Court was only dealing with the interpretation of the New York statutes and it appears that New York had seen fit to pass statutes governing the granting of hearings under certain circumstances when a child is removed from a foster parent's home.

We will be pleased to discuss the decision with you in more detail if you should so desire.

With my kindest personal regards,  
Sincerely,

Raymond G. Halford  
Deputy Attorney General

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