

1974 WL 27975 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 26, 1974

***1 Re: Release of Juveniles Over Seventeen.**

Mr. James K. Hope, Jr.
Director
Department of Juvenile Placement and Aftercare
915 Main Street, Rm. 221
Columbia, SC 29201

Dear Mr. Hope:

By letter of July 10, 1974, you have inquired as to the authority of the Board of Juvenile Placement and Aftercare to place on conditional release juveniles who are in the custody of the Department of Youth Services but who have reached their 17th birthday.

Section 55-50.27, S. C. Code of Laws, as amended, reads:

Any juvenile, who shall have been conditionally released from a correctional school, shall remain in legal custody of the Board of Youth Services until the expiration of the specified term imposed in his conditional aftercare release. The specified period of conditional release may expire before but not after the seventeenth birthday of the juvenile . . .

This section appears to state that no conditional release may be granted by the Board of Juvenile Placement after a committed child has reached seventeen years of age.

However, Section 55-50.30, S. C. Code of Laws, as amended, provides:

. . .

When a child is convicted of crime or has entered a plea of guilty or nolo contendere in a court authorized to commit to the custody of the Board of Youth Services or the Board of Juvenile Placement and Aftercare, such child may be committed to an indeterminate period until he has reached his twenty-first birthday or until sooner released by the Board of Juvenile Placement and Aftercare under its discretionary powers. (emphasis added)

and further

All commitments to the custody of the Board of Youth Services for delinquency . . . shall be made only for the reasons and in the manner prescribed in . . . the Family Court Act . . . When a child is committed to the custody of the board under such proceedings, commitment shall be for an indeterminate sentence, not extending beyond the twenty-first birthday of the child unless sooner released by the board. (emphasis added)

And Section 55-50.33, S. C. Code of Laws, as amended, provides:

Any commitment under this article shall be full and sufficient authority to the boards . . . for the detention and keeping therein of any child until he arrives at the age of twenty-one years, unless sooner dismissed therefrom by order of the Board of Juvenile Placement and Aftercare . . . (emphasis added)

And Section 50-50.25, S. C. Code of Laws, as amended, provides:

The board shall make periodic inspections, at least quarterly, of the records of persons committed to the custody of the Board of Youth Services and may, in its discretion, issue temporary and final discharges or release such persons conditionally and prescribe conditions for such release.

...

In interpreting statutory language the objective is, of course, to determine the intent of the Legislature. The last three statutes cited seem to imply that the Board of Juvenile Placement and Aftercare has authority to grant conditional and final releases to all committed children up to the age of twenty-one. However, such intent is implied only and this implication is opposed by the express language of Section 55-50.27 which uses the word 'seventeen', which cannot be overlooked.

*2 It does not seem logical that the Legislature would prescribe a system of juvenile corrections whereunder all juveniles up to the age of seventeen could be conditionally released under proper circumstances, but under which juveniles committed who are not released prior to age seventeen must then stay in the physical custody of the Department of Youth Services until they become twenty-one, with no opportunity for parole. Nevertheless, that is arguably what the language of the Juvenile Corrections Act provides. Note, for example, those provisions of Section 55-50.30 not previously cited which require that commitments by a court for serious felonies 'include a further provision that the Board of Juvenile Placement and Aftercare may transfer such child to the Board of Youth Services, which may then transfer such child to the State Department of Corrections'. If the Legislature had intended for the Board of Juvenile Placement and Aftercare to have the power to release up to the age of twenty-one, it would seem unnecessary to first have to transfer children to the Department of Youth Services.

In summary, I advise that the authority of the Board of Juvenile Placement and Aftercare to either conditionally release or finally release committed children over seventeen years of age from custody is not clear. Such authority was probably intended by the Legislature but could readily be challenged. It is the recommendation of this office that an amendment to Section 55-50.27 be obtained at the next legislative session changing the word 'seventeen' to 'twenty-one'. In the meantime, in the opinion of this office the Board of Juvenile Placement and Aftercare should continue its policy of conditionally releasing juveniles over the age of seventeen, but should be particularly careful to insure that applications of questionably merit are not approved.

If there are any questions, please correspond.

Very truly yours,

John B. Grimball
Assistant Attorney General

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