1973 S.C. Op. Atty. Gen. 110 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3503, 1973 WL 20964

Office of the Attorney General

State of South Carolina
Opinion No. 3503
April 2, 1973

***1** Dr. Charles D. Barnett
Commissioner
State Department of Mental Retardation
2414 Bull Street
Columbia, South Carolina 29201

Dear Dr. Barnett:
In your letter of March 13, 1973, you requested an opinion from this office regarding the parental-control of a resident of one of the State's mental retardation institutions, who has attained age twenty-one (21), but who was admitted by his parents when he was a minor.

At common law if the child was incompetent when reaching twenty-one (21), the parents were required to provide maintenance. Gaydes v. Domabyl, 152 A. 549, 301 Pa. 523. In South Carolina emancipation of a child is effected by operation of law when the child attains the age of majority unless infirmity of mind or body renders the child unable to take care of itself. Parker v. Parker, 230 S.C. 28, 31, 94 S.E.2d 12, 60 A.L.R.(2d) 1280.

In the case of a resident of a mental retardation center who was voluntarily admitted by his parents when he was a minor, a presumption would arise that he was not emancipated. Before admission to the mental retardation institution, the center must determine that the child is mentally retarded and that he is in need of the services which are available at the center, 1962 S.C. Code § 32–927.23, as amended. These facts would tend to prove that the child was unable to care for itself due to an infirmity of the mind. The court in the Parker case also stated that whether or not a child has been emancipated depends upon the peculiar facts and circumstances of each case. Emancipation of a minor child is never presumed, and the burden of proof is upon him who alleges it. Ibid. at 31. Unless there is a court finding that the child is competent and has been emancipated, the facts in this case indicate that the parent-child relationship with its inherent duties and responsibilities exists.

The statute creating the mental retardation institutions also supports this view. § 32–927.21 of the 1962 S. C. Code, as amended, states that the admission of a mentally retarded person shall in no way be construed as a termination of parental responsibilities to the individual. It further states that the philosophy of this legislation is that parental involvement and participation in all aspects of programming for a given mentally retarded person is a normal, expected and desirable course, and that a cooperative, communicative relationship between the Department of Mental Retardation and the parent will result in decisions and programs which place the retarded person's interests and welfare as the mutual responsibility and concern of the parent and the Department.

In the opinion of this office the parent-child relationship would normally continue for a resident who was admitted when a minor, but who has attained age twenty-one (21), since the child is in a mental retardation center. The child, although he has reached the age of twenty-one (21), is unable to support and maintain himself. The child, however, could prove his emancipation, but the burden of proof would be on him.

***2** You also asked if the parent has the prerogative to require the resident, in opposition to the resident's wishes, to return to the parent's home. § 32–927.29 of the S. C. Code, as amended, provides that a voluntary admission may be detained for no more than 96 hours following the receipt of a written request from the person upon whose application the mentally retarded person

was admitted to the Department's jurisdiction to have the mentally retarded person discharged. Since the parents admitted the child, they have the legal right to withdraw him from the center, unless the Department decides to move for Judicial Admission.
Very truly yours,

Raymond G. Halford
Assistant Attorney General

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