

1973 WL 27709 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1973

*1 Honorable C. L. Cuttino, Jr.
Judge
Civil and Family Court of Sumter County
Sumter, South Carolina 29150

Dear Judge Cuttino:

Thank you for your letter of August 3, 1973, reading as follows:

'I have been requested to issue the following Order with reference to a divorce recently issued, to wit:

'I direct that the judgment roll in this matter be sealed, not to be opened without leave of the Court.'

Please advise whether as Judge of the Civil and Family Court for Sumter County, I am empowered to issue such an Order or not.'

We have found only one case in this State dealing with the matter, which is cited as Ex Parte Davidge, 63 S.E. 449. There appears to be no South Carolina citation. That case recites that the parties had made application to withdraw from the records certain affidavits which were before the Court at the hearing, but the Court declined to withdraw such records on the ground that it had no authority to do so. The Court did, however, authorize counsel to select such affidavits as they wished and provided that they be sealed by the Clerk, to be opened only on order of the court.

This appears to be in accordance with general authority such as is set forth in 20 Am.Jur.2d 62, which states that parties to a suit may obtain a direction from the Court to withhold from public inspection such parts of the records as have not been made public by consent of the parties or by proceedings in open court. See also 21 C.J.S. Courts ¶226, which recites that the parties to an action have been permitted by courts to have the papers before the courts at the hearing of the cause sealed, to be opened only on order of the Court.

All courts must be conducted in public according to the Constitution of this State, but I am of the opinion that the authority lies in a court of this State to authorize the sealing of the record, or parts thereof, when the public interest requires that the same be kept from public disclosure. The Freedom of Information Act recognized this as an exception to its provisions. There is some doubt in my mind about the validity of this conclusion, in that the General Assembly has authorized certain proceedings to be free from public disclosure such as adoption proceedings, and this may be a basis for asserting that where the intent to make records subject to non-disclosure, that intent has been expressly given, and the absence of such authorization would be an indication that public inspection is implied. I am aware of only one instance where this has occurred in my experience, and at that time the Court ordered records sealed, with the consent of the parties, but the Court in that instance expressed some concern as to the procedure.

It is my opinion that the authority to seal such records probably exists if disclosure is determined by the Court to be contrary to the public interest.

Very truly yours,

Daniel R. McLeod

Attorney General

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