1973 WL 26869 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 30, 1973

***1** Dr. R. Archie Ellis
Commissioner
South Caroline Department
of Social Services
Post Office Box 1520
Columbia, South Carolina 29202

Dear Dr. Ellis:
You have requested the opinion of this Office as to certain policy requirements established by the South Carolina Department of Social Services concerning releases for adoption. I understand that your agency requires the co-signature of the parent of a minor unwed mother on a release for adoption of the unwed-daughter's child. Your attention is directed to Section 10-2537.7 of the 1962 Code (1971 Supp.):
'Written consent required—An adoption of a child may be decreed when there have been filed written consents to adoption executed by:
(b) The mother alone, 'regardless of age' if the child is illegitimate; or (Emphasis added)

(d) The executive head of an agency if both parents are dead or if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated and custody of the child had been legally vested in such agency with authority to consent to adoption of the child;'

It would seem apparent that subsection (b) would clearly take precedence in the absence of the particular fact situation provided for in subsection (d). It is generally held that if a statute is clear and unambiguous in its terms and there is no room for construction, the terms of the statute must be given their liberal meaning. Southeastern Fire Ins. Co. v. South Carolina tax Comm., 253 S.C. 407, 171 S.E. 2d 355 (1969); Jones v. South Carolina Hwy, Dept., 247 S.C. 132, 146 S.E. 2d 166 (1966). It is the opinion of this Office that subsection (b) of Section 10-2587.7 would be the procedure that must be followed under the circumstances you describe.

The case of Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972) is presently being studied by this Office to determine its effects on our adoption statutes and other statutes relating to custody, termination of parental rights, etc. The United States Supreme Court held in Stanley that the father of children born out of wedlock did have parental rights; and, hence, a father may have the right to notice of proceedings concerning his illegitimate children.

Your second question concerns the appointment of a Guardian ad Litem for mothers between the ages of 18 and 21 in adoption proceedings. I understand that this is to insure the procurement of a valid consent on the the part of the mother pursuant to Section 10-2587.7(d). That a valid consent is essential for the court to issue an adoption decree is not questioned; Goff. v. Benedict, 252 S.C. 83, 165 S.E. 2d 269 (1969). The Appointment of a Guardian ad Litem for an infant is provided for in Sections 10-231, 10-233, and 10-234 of the 1962 code. Rule 6 of the Circuit Court Rules contained in Volume 15 of the 1962 Code also makes certain requirements necessary before appointment of a Guardian ad Litem. It is well settled that the term "infant" embraces those persons under the age of 21 years. See the cases contained in 21 Words and Phrases, Infants, pp. 557-558; also 1970-1971 Op. Atty. Gen., p. 123, No. 3162. In the absence of state legislation or constitutional amendment, it is the opinion

of this Office that legal age remains fixed at 21 years, and persons under this age should be provided with the same procedural safeguards as those under the age of 18.

***2** Raymond G. Halford
Assistant Attorney General

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