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ATTORNEY GENERAL

"All officers, agents, agencies and departments of the State are required to give to any committee of the General Assembly, upon request, all information and all data within their possession, or ascertainable from their records. This requirement is mandatory *and shall include requests made by any individual member of the General Assembly* or any of its committees or chairmen thereof." (Emphasis added)

Although N.C.G.S. 120-19 is subject to a different interpretation, we conclude that this statute allows "any individual member of the General Assembly" to request information contained in the personnel records of a State employee which is otherwise considered confidential, notwithstanding the fact that at the time the request is made, the individual member of the General Assembly is not acting in his capacity as a member of some committee of the General Assembly. We assume, of course, that in making the request the member feels that such information is necessary to fulfill his responsibilities and duties as a member of the General Assembly.

Rufus L. Edmisten, Attorney General
James F. Bullock
Senior Deputy Attorney General

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12 January 1979

Subject: Public Records; Confidentiality of Records; Social Services; Child Support; Public Officers and Employees; State Departments, Institutions and Agencies; Counties; Municipalities

Requested by: Mr. Philip Powell
Personnel Director
North Carolina Department of Agriculture
Post Office Box 27647
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Question: Must State, county, and city officials having custody of personnel records of

their respective employees (both past and present) furnish otherwise confidential locational information concerning these employees to the Department of Human Resources when, at the request of a designated local Child Support Enforcement Program representative, the Department is fulfilling its obligations under G.S. 110-139 to locate responsible parents for purposes of establishing and enforcing their child support obligations as levied by Article 9, Chapter 110.

Conclusion: Yes.

Since the State (Article 7, Chapter 126) and the county (G.S. 153A-98) confidentiality statutes are in substance the same as the statute for municipalities (G.S. 160A-168), the reasoning of the Attorney General's Opinion (45 N.C.A.G. 289 (1976)) covering municipal personnel records would apply equally to the county and state personnel records. Consequently, city, county, and state officials must release otherwise confidential personnel file information to the Department of Human Resources for satisfaction of the Child Support Enforcement Program's responsible parent locational obligations. The crux of G.S. 110-139 reads:

> "...All State, county and city agencies, officers and employees shall cooperate with the Department in the location of parents who have abandoned and deserted children with all pertinent information relative to the location, income and property of such parents, *notwithstanding any provision of law making such information confidential.* ..." (Emphasis supplied)

A critical point for consideration is whether the analogous provisions to G.S. 160A-168(c)(5) for municipal personnel records in the State (G.S. 126-24(5)) and the county (G.S. 153A-98(c)(5)) statutes, prohibit the release of otherwise confidential personnel information for use in criminal prosecutions-like criminal nonsupport-when the information is sought under the authority of G.S. 110-139.

The relevant sections of the State, county, and municipal confidentiality statutes read as follows:

> "All other information contained in a personnel file is confidential and shall not be open for inspection and examination except to the following persons: ...
>
> > An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the department head of the employee whose record is to be inspected or, in the case of an applicant for employment or a former employee, by the department head of the agency in which the record is maintained as necessary and essential to the pursuance of a proper function of said agency; provided, *however, that such information shall not be divulged for purposes of assisting in a criminal prosecution*, nor for purposes of assisting in a tax investigation." G.S. 126-24(5). (Emphasis supplied)

"All information contained in a (county) (city) employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

> An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, *but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee*, or for the purpose of assisting in an investigation of the employee's tax liability." G.S. 153A-98(c)(5); G.S. 160A-168(c)(5). (Emphasis supplied)

Although a prior Attorney General's opinion, 45 N.C.A.G. 289 (1976) addressed this issue for municipal personnel records under the law in existence at that time, subsequent changes in the law justify a re-examination and redisposition of this issue. The change in the status of the law since the former opinion is based on another prior Attorney General's Opinion found at 47 N.C.A.G. 42 (1977) interpreting a Child Support Enforcement Program Agent to have the authority to institute criminal proceedings for nonsupport. The change is also based on recent legislation (N.C. 2nd Sess. Laws, c. 1186, s. 4 (1977)) which clearly gives an agent such authority. See G.S. 110-130.

Initially, the resolution of this issue must begin with an examination of the Federal enabling legislation, P.L. 93-647 (January 4, 1975), on which the enactment of Article 9, Chapter 110 is based. In part, a provision of that legislation states:

> "A State plan for child support must ... provide that the agency administering the plan will establish a service to locate absent parents utilizing ... *all sources of information and available records* ...." 42 U.S.C. 654(8)(A). (Emphasis supplied)

Accordingly, the State Plan submitted to the Department of Health, Education, and Welfare reads as follows:

> "*Parent Locator Service*
>
> The IV-D agency has established and will maintain a parent locator service utilizing:
>
> (a) all sources of information and records available in the State, and in other states as appropriate; ..." N.C. State Plan for the Child Support Enforcement Program, §2.10 effective date August 1, 1975.

Moreover, an examination of the legislative history reflects a Congressional intent that states first make use of local and state mechanisms for tracing absent parents before being allowed to use the Federal Parent Locator Service (Federal PLS) established by 42

U.S.C. 653. 4 *U.S. Cong. & Adm. News* 8152 (1974). Consequently, the following provision was promulgated in the Federal Register:

> "However, prior to the submission of any request to the Federal PLS, ... the State PLS (Parent Locator Service) must first make diligent and reasonable efforts to locate an absent parent." 43 F.R. 33248 (July 31, 1978) modifying in part, 45 C.F.R. § 302.35 (c) (3).

The corresponding section of the State Program Plan as submitted to the Department of Health, Education and Welfare reads:

> "The State PLS makes reasonable and diligent efforts to locate the absent parent with respect to requests for location made by individuals ... prior to the submission of any of these requests to the Federal PLS." North Carolina State Plan for Child Support Enforcement Program, §2.10-5 as modified effective July 31, 1978.

Clearly, Congress intended, with only tow specific exceptions, that once a request makes its way to the Federal PLS, no information, confidential or otherwise, should escape scrutiny. This Congressional intent is reflected by the fact that on January 4, 1975, Congress enacted a section of P.L. 93-657, later codified as 42 U.S.C. §653 (e) (1) - (2) which reads in part:

> "Whenever the Secretary (of Health, Education and Welfare) receives a request (for locational information) submitted under subsection (b) of this Section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States *or of any State. Notwithstanding any other provision of law,* whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such

individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, *except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data*, such information shall not be transmitted and such individual shall immediately notify the Secretary." (Emphasis supplied)

Unquestionably, Congress envisioned that the enactment of this provision exempting all Program parent locator inquiries from all State and Federal confidentiality statutes (with only the two referenced exceptions) could result in the use of information obtained thereby in civil or criminal prosecutions. For example, the legislative history specifically refers to Congressional contemplation of criminal prosecution resulting from the above-referenced exemption enabling the obtaining of welfare information, formerly confidential. In part, the legislative history states:

"The Committee bill would make it clear that this requirement (of general confidentiality) may not be used to prevent a court, prosecuting attorney, tax authority, law enforcement officer, legislative body or other public official from obtaining information required in connection with his official duties such as *obtaining support payments* or prosecuting fraud *or other criminal or civil violations*. 4 *U.S. Cong. & Adm. News* 8152 (1974). (Emphasis supplied)

In enacting the legislation (N.C. Sess. Laws, c. 827, s. 1 (1975)) embodying the confidentiality exemption (specifically G.S. 110-139) for the North Carolina Child Support Enforcement Program established and codified as Article 9, Chapter 110, the North Carolina General Assembly apparently intended to without exception pre-empt all State confidentiality statutes and to track

the broad exemption granted by the aforereferenced Federal enabling legislation. This State confidentiality exemption must have been intended to pre-empt even the general prohibition of the use of personnel information for criminal prosecution–such as for criminal nonsupport. The opposite interpretation would lead to the anomalous result of the State merely obtaining the same information from the Secretary of Health, Education and Welfare under the Federal Parent Locator system pursuant to his broad confidentiality exemption based on 42 U.S.C. 653 (e) (1)-(2), discussed above. Thereafter, the Child Support Enforcement Program representative would be obligated by both Federal and State law to proceed with the same information (although from a different source) in potentially a criminal action. As hereinafter indicated the Federal enabling legislation construed with a provision of the State legislation reflects the General Assembly's intention to have conformity with the Federal legislation.

> "The support rights assigned to the State under Section 602(a) (26) (42 USCS § 602(a)(26)) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under *all applicable State and local processes.*" 42 U.S.C. 656(a). (Emphasis supplied)
>
> "*Nothing in this Article (Article 9, Chapter 110) is intended to conflict with any provision of federal law or to result in the loss of federal funds.*" G.S. 110-140. (Emphasis supplied)

A reasonable consequence of this construction is that the State Program representatives are equally obligated to proceed criminally in non-support cases through either Article 40 of Chapter 14 or through Article 1, Chapter 49. Moreover, the intent for conformity must be construed to mandate following the requirements of confidentiality exemptions contained in the Program Federal enabling legislation.

Additionally, as noted in the last paragraph of the previous and more limited Attorney General's opinion on this topic, 45 N.C.A.G. 289 (1976), the above-referenced statutes, G.S. 160A-168(c)(5)

(municipal records), G.S. 153A-98(c)(5) (county records), and G.S. 126-24(5) (state records), were enacted prior to the broad confidentiality exemption of G.S. 110-139. (See N.C. Sess. Laws, c.701, s. 1 (1975) ratified June 23, 1975, covering the normal restriction for municipal and county personnel records and N.C. Sess. Laws, c. 257, s.1 (1975) ratified May 12, 1975, for State personnel records compared with N.C. Sess. Laws, c. 827, s. 1 (1975) ratified June 25, 1975, containing the confidentiality exemption of G.S. 110-139.)

From this chronology of legislative enactments, it must be presumed that the Legislature knew and intended the consequences of pre-emption of normal confidentiality restraints of all State and local government records by the subsequent enactment of the confidentiality exemption of G.S. 110-139.

For all these reasons, the Child Support Enforcement exemption from normal confidentiality restraints under G.S. 110-139 would pre- empt all State, county, and municipality statutes generally maintaining the confidentiality of personnel records even though the representative of the Program may be obtaining locational information from these records which may ultimately assist Program personnel in obtaining support through either criminal or civil proceedings.

Rufus L. Edmisten, Attorney General
R. James Lore
Associate Attorney

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15 January 1979

Subject: Public Officers and Employees; Register of Deeds; Counties; Who May Have Keys to Office of Register of Deeds.

Requested by: Lula Heath
Register of Deeds
Snow Hill, N. C.