

Rufus L. Edmisten, Attorney General
Barry S. McNeill
Associate Attorney

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9 June 1980

Subject: State Departments, Institutions and Agencies; Confidentiality of Records; Social Services; Counties; Juvenile Protective Service Case Records; N.C.G.S. 108-44; N.C.G.S. 7A-675

Requested by: Thomas Russell Odom
Assistant County Attorney
Durham County
Durham, North Carolina

Question: May a volunteer advisory group of local citizens under sanction from the Chief District Court Judge, obtain and review protective service case records of juveniles maintained by the county department of social services for the purpose of advising the Juvenile Court as to the need for review of custody of children being maintained in foster homes under the supervision of the county department of social services?

Conclusion: The protective service case records are not available to such a group unless review of the records is for purposes directly connected with the administration of programs of public assistance and is expressly authorized by the rules and regulations of the Social Services Commission or the Department of Human Resources.

Custody of a juvenile is vested in a county department of social

services ("DSS") either by consent of the parent(s) of the juvenile or by order of a court of competent jurisdiction. Adjudications of custody in such circumstances will normally arise upon a petition alleging that the juvenile is abused, neglected or dependent, as those terms are defined in the Juvenile Code (N.C.G.S. 7A-516 *et seq.*). Placement of the juvenile in a foster home or foster care facility follows vesting of custody in the county department of social services.

Records relating to obtaining custody and to placement in foster care are maintained by the county DSS. This Office has previously rendered an opinion, published in 47 N.C.A.G. 211, at 213, to the effect that the provisions of N.C.G.S. 108-45 apply to "...all records in the several county departments of social services concerning reports of child abuse and neglect..." Under the reasoning in that opinion, the statute clearly extends to records relating to dependency, custody and foster care.

N.C.G.S. 108-45(a) provides:

"(a) Except as provided in (b) below, it shall be unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the use of any list of names or other information concerning persons applying for or receiving public assistance that may be directly or indirectly derived from the records, files or communications of the Department of Human Resources or the county boards of social services, or acquired in the course of performing official duties except for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the Social Services Commission or the Department of Human Resources."

The exception referred to, appearing in subsection (b) of the statute, is not pertinent here.

Certain aspects of the State's juvenile program are funded in part by the federal government. N.C.G.S. 108-45(a) complies with the federal regulation appearing in 45 C.F.R. 205.50, which requires

in pertinent part, that states receiving such federal funds have statutes limiting use or disclosure of information concerning applicants for or recipients of financial assistance or services to purposes *directly* connected with: (1) administration of the program; (2) investigations, prosecutions or criminal or civil proceedings conducted in connection with administration of the program; and (3) the administration of any other Federal or federally assisted program providing assistance directly to individuals on the basis of need.

It is noted that the regulation specifically forbids "...disclosure to any committee or legislative body (Federal, State or local) of any information that identifies by name and address any such applicant or recipient..." Further, disclosure is restricted to persons subject to standards of confidentiality comparable to those applicable to the county and State social service agencies; and the same policies regarding confidentiality are to be applied to requests for information "...from a governmental authority, the courts, or a law enforcement official as from any other outside source."

N.C.G.S. 7A-675 also speaks to the confidentiality of juvenile records and provides, *inter alia*:

"(c) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by his Department or other placement by the court...

"(d) The records maintained pursuant to subdivisions (b) and (c) may be examined only by order of the judge except that the juvenile shall have the right to examine them.

"(g) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parent.

"(h) Nothing in this section shall preclude the necessary sharing of information among authorized agencies."

The clear intent evinced by N.C.G.S. 108-45(a) and 45 C.F.R. 205.50 is that access to the records in question shall be maintained in strict confidentiality, with the sole exception that they may be made available "...for purposes directly connected with the administration of the programs of public assistance in accordance with the rules and regulations of the Social Services Commission or the Department of Human Resources." We find nothing inconsistent between this intent and the provisions of N.C.G.S. 7A-675, and we are of the opinion that the statutes should be construed *in pari materia*.

From the information supplied, it does not appear that the voluntary advisory group is a part of any federal, State or local agency or that it is authorized by law to perform the functions proposed. We conclude, therefore, that unless the advisory group falls specifically within a rule promulgated by the Social Services Commission or the Department of Human Resources "...for purposes directly connected with the administration of the programs...", the advisory group is not authorized to obtain and review protective service case records of juveniles.

Rufus L. Edmisten, Attorney General
Henry T. Rosser
Assistant Attorney General

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10 June 1980

Subject: Criminal Law and Procedure; Sentences;
Probation; Restitution; Bankruptcy
Proceedings

Requested by: The Honorable Peter W. Hairston
Resident Superior Court Judge
Twenty-second Judicial District