NORTH CAROLINA ATTORNEY GENERAL REPORTS

VOLUME 47

NUMBER 1

UFUS L. EDMISTEN
TTORNEY GENERAL

Conclusion: No. G.S. 6-21.3 contemplates a civil action, and only the presiding judge or magistrate may add the five dollars to the amount owed on the check. However, this statute does not prohibit a contractual agreement between the holder and maker that said amount would be charged for a returned check.

G.S. 6-21.3 was enacted by Chapter 129, Session Laws of 1975, an act to provide additional civil remedies for losses caused by acceptance of returned checks. The statute clearly states "In *an action* by a holder to recover the sum payable of a check drawn by the *defendant* on which payment has been refused by the payor bank because the drawer had no account or insufficient funds,...". (Emphasis added.)

Upon a determination that the plaintiff has prevailed, the presiding judge or magistrate shall add to the amount due to the plaintiff the sum of five dollars to defray the costs of processing the returned check.

Thus only in an action for the recovery of the amount due on such check may the $5.00 be added to the amount of the returned check, unless the holder had a contractual understanding with the maker at the time the check was given that some additional amount would be charged for a returned check.

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

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28 March 1978

Subject: Social Services; Child Abuse Prevention and Treatment Act, Public Law 93-247 (1974); 1977 North Carolina Grant Application

Requested by: Carl H. Harper, Regional Attorney
Region IV
United States Department of Health
Education and Welfare

Questions: (1) Is the concept of mental injury implicitly incorporated in the definition of a "neglected child" set forth in the North Carolina Child Abuse and Neglect Reporting Law (G.S. 110-117) and the North Carolina Juvenile Jurisdiction and Procedure Law (G.S. 7A-278(4))?

(2) With respect to cases of suspected child abuse coming before the juvenile court (the District Court Division of the General Court of Justice), are the religious beliefs of a parent or guardian recognized?

(3) Does State law envelop all records concerning reports of child abuse and neglect with confidentiality?

(4) Is a guardian *ad litem* appointed in all child abuse cases coming before the juvenile court?

Conclusions: (1) Yes.

(2) Yes, subject to the qualification that follows hereinafter.

(3) Yes.

(4) Yes.

This opinion is in response to several questions raised by the Office of Regional Attorney, Region IV, United States Department of Health, Education and Welfare in the review of the North Carolina application for a grant under the Child Abuse Prevention and Treatment Act, Public Law 93-247(1974).

As to the first inquiry posed above, this Office has consistently expressed the opinion that abuse as well as mental injury are implicitly encompassed within the definition of "neglected child" under G.S. 7A-278(4) as referenced by G.S. 110-117.

With respect to the religious freedom exception of the Federal Regulation found at 45 C.F.R. §1340.1-2(b)(1), it may be stated without equivocation that North Carolina does adhere to the provisions of the First Amendment to the United States Constitution as made applicable to the State by the Fourteenth Amendment. Notwithstanding this adherence, however, a juvenile court in this State will indeed order that medical services be provided to a child where his health requires it.

In regard to the Federal Regulation requiring a State law which envelops all records concerning reports of child abuse and neglect with confidentiality, we would cite you to the provisions of G.S. 110-122, G.S. 108-45(a), and G.S. 108-24(2) which when read together satisfy this federal mandate. That is, the reports of child abuse and neglect cases to the Central Registry of the Department of Human Resources are clearly confidential. Moreover, we have often stated that all the records in the several county departments of social services concerning reports of child abuse and neglect (and these would be the only official records maintained by any governmental agency other than the Department of Human Resources–G.S. 110-118 and G.S. 110-119) fall within the protective purview of G.S. 108-45(a) simply because "public assistance" is applied for or received in the form of "services" (G.S. 108-24(2)) which the department of social services is obligated to provide pursuant to Article 8 of Chapter 110 of the General Statutes. Any breach of this confidentiality is punishable as a misdemeanor. G.S. 108-45(b). This confidentiality, incidentally, would extend to all records, and the contents thereof, relating to reported cases of child abuse or neglect whether or not substantiated. Finally, the exception to confidentiality set forth in Subsection (b) of G.S. 108-45 is applicable only to public assistance clients who receive cash payments.

This brings us to an examination of Section 4(b)(2)(G) of the Child Abuse Prevention and Treatment Act which requires the

appointment of a guardian *ad litem* in all child abuse cases coming before the juvenile court. North Carolina law has for some time provided:

> "In any case where there is no parent to appear in a hearing with the child or where the court finds it would be in the best interest of the child, the court may appoint a guardian of the person for the child, who shall operate under the supervision of the court with or without bond, and who shall file only such reports as the court shall require. Such guardian of the person...may represent the child in legal actions before any court..."
> G.S. 7A-286(7)

Additionally, Chapter 766 of the 1977 Session Laws amended G.S. 7A-283 to require the appointment of an attorney as guardian *ad litem* to represent any child alleged to be neglected "unless the court shall find as a fact that the child is not in need of and cannot benefit from such representation." Parenthetically, we would note for your attention our aforestated opinion regarding the definition of "neglected child".

Quite obviously then, the appointment of a guardian *ad litem* in child abuse cases coming before the juvenile court is legislatively sanctioned and, in fact, encouraged. Thus, the requirement of the federal law and the Federal Regulation found at 45 C.F.R. § 1340.3-3(d)(7) is partially satisfied hereby. However, the Federal Regulation goes on to add that the Governor must state "that such appointments are made, in all cases." Such a statement would be totally inappropriate in North Carolina since the district courts (i.e., the juvenile courts) are under the exclusive jurisdiction of the Administrative Office of the Courts. Therefore, in an attempt to comply with the spirit, if not the exact letter of the Federal Regulation, this Office secured the following opinion from the Assistant Director of the North Carolina Administrative Office of the Courts:

> "...I can unequivocally state to you that in every instance wherein a juvenile petition is filed alleging facts sufficient to show that the juvenile is an abused

child, the judges of the District Court of this State will appoint a guardian *ad litem* to represent the child."

A copy of the Opinion Letter from the Administrative Office of the Courts has already been submitted to the Department of Health, Education and Welfare in conjunction with the North Carolina grant application.

Rufus L. Edmisten, Attorney General
William Woodward Webb
Assistant Attorney General

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4 April 1978

Subject: Courts; Juveniles; Mental Health; Applicability of Article 56, Chapter 15A to Juvenile Proceedings.

Requested by: Dr. Lenore Behar
Chief, Children and Youth Services
Division of Mental Health Services

Question: Do the provisions of Article 56, Chapter 15A of the General Statutes of North Carolina apply to children who are the subject of juvenile proceeding authorized by Article 23, Chapter 7A of the General Statutes?

Conclusion: No, except in instances where a child has reached his 14th birthday and has been transferred to the superior court division for criminal trial as an adult.

Chapter 15A is entitled "Criminal Procedure Act". It was introduced into the General Assembly as H.B. 256, entitled "An Act to Amend the Laws Relating to Pretrial Criminal Procedure."