

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-758-8687

May 22, 1985

Larry W. Propes, Deputy Director  
S. C. Court Administration  
P. O. Box 50447  
Columbia, SC 29250

Dear Mr. Propes:

In your letter of March 27, 1985, to the Attorney General, you inquire whether a probate court can establish a "limited guardianship" for a specific purpose (i.e., to qualify a minor to attend school in a particular school district) and in the process legitimately exempt the guardian from the accounting requirements of §21-19-140, South Carolina Code of Laws, 1976, as amended.

In previous opinions, copies of which are attached, this Office has concluded that a guardian with limited authority does not satisfy the definition of legal guardian. "Legal guardian" has been defined as "...one who, by operation of law, e.g. by court order or by will, has the care and management of the estate or the person or both of a child during the latter's minority." (cites omitted. See June 11, 1970, Opinion of the Attorney General written by C. Tolbert Goolsby, Jr. See also 1969-70 Ops. Atty. Gen. No. 3317, Page 138). Furthermore, in another opinion, a copy of which is attached, our Office has cautioned that the appointment of a "limited guardian" is not advisable unless the appointment is reasonable, necessary and in the best interest of the minor. See September 14, 1982, Opinion of the Attorney General written by Edwin E. Evans.

Under the statutory law in South Carolina, a guardian may be a guardian of the person, or the property or both. See §21-19-10, et seq., South Carolina Code of Laws, 1976, as amended.

A guardian of the person is a guardian who is lawfully entrusted with the care of a ward while a guardian of the property (or the estate) is a guardian entrusted with the lawful care and control of the ward's property. 39 C.J.S. Guardians and Wards, §5; 39 Am. Jur.2d Guardians and Wards, §§17 and 18. While the guardianship may be divided between two (2) persons, one (1) for the person and

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one (1) for the estate, the common and approved practice is to have the same person appointed as guardian of the person and of the property. 39 Am.Jur.2d supra, §17. Furthermore, "a person appointed guardian without any word of limitation is a guardian of both person and the estate". 39 Am.Jur.2d supra, §51. There is also a provision for the appointment of committees. Section 44-23-710, et seq. The committee at common law is entrusted with the temporary preservation of the incompetent's estate. 44 C.J.S. Insane Persons, §85b. The primary purpose of the committee is the protection of the ward's property; however, South Carolina law provides authorization for the appointment of a guardian both of the person and of the property. Section 21-19-10 and §41-23-10(23). In essence then, a committee of an incompetent serves the same purpose as the guardian of an estate of an incompetent. 39 Am.Jur.2d supra, §18.

A guardian of the person, while not entrusted with the care and control of the ward's estate, must look to the ward's health, education and support and is involved to some extent with financing the care of the ward from interest and profits of the ward's estate. Consequently, because all guardians, whether of the person or of the estate, handle finances of the ward to some extent, the law in South Carolina requires that all guardians and committees appointed by the Probate Judge render an annual accounting. See §21-19-130 as to all guardians and committees; See §21-19-140 as to guardians of estates; See §21-21-60 as to natural and appointed guardians by deed or will; See §21-23-80 as to public guardians.

It appears to be the clear intention of the legislature that all types of guardians recognized in South Carolina be required to render an accounting. Therefore, the validity of a limited guardianship which exempts the guardian from an accounting is questionable.

Sincerely,

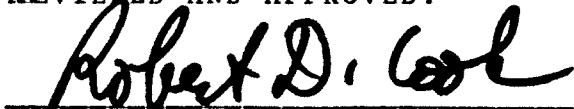


B. J. Willoughby  
Assistant Attorney General

BJW/rho

Enclosures

REVIEWED AND APPROVED:



ROBERT D. COOK

Executive Assistant for Opinions