

1982 WL 189519 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 21, 1982

***1 Re: Will of Spartan D. Granger**

The Honorable Ralph W. Drake
Probate Judge
Greenville County
Room 103, County Courthouse
Greenville, South Carolina 29601

Dear Judge Drake:

Thank you for your letter of May 10, 1982, concerning the will referenced above. You have inquired of this office whether gifts to certain legatees pursuant to Item II(c) of the will have lapsed. According to the facts related in your letter, three (3) of the five (5) brothers and sisters named in Item II(c) of the testator's will predeceased him. It is the opinion of this office that the legacies to the predeceased brothers and sister lapsed.

In South Carolina,

[t]he law is well established that a legacy lapses by the death of the legatee in the lifetime of the testator, unless there are other provisions in the will, or by statute, preventing a lapse. [Cites omitted]. [Albergotti, et al. v. Summers, et al.](#), 203 S.C. 137, 147, 26 S.E.2d 395.

South Carolina's antilapse statute [§ 21-7-470] is limited to a case where a father or mother by will gives a legacy or devise to a child, and such child dies in the lifetime of the parents leaving issue. [Padgett v. Black](#), 229 S.C. 142, 92 S.E.2d 153. Accordingly, South Carolina's antilapse statute is inapplicable to the legacies under Item II(c) of the will and offers no salvation for these legacies.

Further, in the absence of an applicable antilapse statute, the testator's intent to prevent a lapse and designate a substitute legatee 'must be gathered from the four corners of the will'. [Padgett, supra](#) at 153. The will expresses no such intention.

If this office can be of further assistance, please call upon us.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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