

1982 WL 189425 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 14, 1982

*1 The Honorable Rosemary Trakas
Probate Judge
Greenwood County
Post Office Box 1210
Greenwood, South Carolina 29648

Dear Judge Trakas:

You have requested this office to advise you whether you may refuse to appoint a guardian for a minor when the sole basis for the appointment is to permit the minor to attend a particular school. You are advised that the appointment of a guardian for a minor involves an exercise of the Court's discretion and should be made only after a finding that the best interest of the child is served.

The appointment of guardians for minors is within the jurisdiction of the judge of probate. §§ 21-19-10 and [14-23-1150\(b\) Code](#) of Laws for South Carolina, 1976, as amended. Certain aspects of the procedures involved are set forth in Chapter 19, Title 21 of the Code. However, these statutory provisions are incomplete and offer little assistance in determining all necessary requisites to the appointment of a guardian for a minor.

Generally, it is said that

the paramount consideration in the selection of a guardian is the interest and welfare of the infant. 39 C.J.S. 'Guardian and Ward', § 17, at 38; see also, 39 Am.Jur.2d 'Guardian and Ward' § 31, at 34.

In addition, '[a] condition to the appointment of a guardian is the showing that the appointment is reasonable and necessary.' 39 C.J.S. 'Guardian and Ward' § 14, at 32. The case law in South Carolina offers little in amplification of these fundamental principals, particularly with respect to the precise question presented. However, at least one court has noted that a desire to attend a particular school is sufficient basis for appointing a guardian. [In re DiSalvo, 227 N.E.2d 441, \(Ohio\) \(1967\)](#); see also, 39 C.J.S. 'Guardian and Ward' § 9, at 23.

In addition, this office has previously issued its opinion concluding that a guardianship created for the 'purpose of entering school only' is legally ineffective to place a child in a particular school district. 1979 Op. Att'y. Gen., October 12, 1979 (unpublished).

In conclusion, you are advised that a guardianship petition should be denied if the appointment is neither reasonable or necessary nor in the best interest of the minor. The refusal by the Court to appoint a guardian for the child to attend a particular school would appear to be a reasonable exercise of your judicial discretion.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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