

1979 WL 43110 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 12, 1979

*1 W. B. Hawkins, Esquire
Hawkins and McInnis
Attorneys at Law
302 W. Harrison Street
Dillon, South Carolina 29536

Dear Mr. Hawkins:

As an attorney for Dillon County School District No. 2, you have requested the opinion of this Office as to whether a guardianship for a particular child will permit that child to attend school in your district.

On September 18, 1979, the mother of this child petitioned the Probate Court for the appointment of a guardian for the child 'for the purpose of entering school only.' According to the Petition, the child's parents reside in North Carolina, but the guardian is a resident of Dillon County. Although the Petition contains no statement as to the residence of the child, the September 18, 1979, Order of the Probate Judge appointing the Dillon County guardian states that the child is a Dillon County resident. Although the Order contains form language regarding broad powers of the Guardian, it also states 'purpose of entering school only.' Thus, the Order must be assumed to confine the guardianship to matters relating to school attendance.

[Section 59-63-30 of the Code of Laws of South Carolina \(1976\)](#) sets out the following qualifications for attendance at the public schools of a school district which are applicable to the guardianship in question here: '[the] child resides with its parents or legal guardian [, and] [t]he parent or legal guardian, with whom the child resides, is a resident of such school district'¹

A June 11, 1970, Opinion of the Attorney General, written by C. Tolbert Goolsby, Jr., now Deputy Attorney General, defines the term 'legal guardian' 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. [State v. Johnson, N.D., 88 N.W. 2d 209](#); 18A WORDS AND PHRASES Guardian at 700. Cf. 24A WORDS AND PHRASES Legal Guardian at 371.' See also an October 8, 1979, Opinion of this Office written by Mr. Goolsby; 1969-70 Op. Att'y Gen. No. 3317, p. 138. This definition indicates that the legislature intended that [§ 59-63-30](#) guardians should have broad powers for the care and management of the child. Here, the guardian in question was appointed only for the purpose of school attendance. Her authority is limited and is not sufficient to qualify her as a legal guardian under [§ 59-63-30](#). Thus, the September 18, 1979, Guardianship Order does not provide authority for the child in question to attend Dillon County School District No. 2 schools.²

If I can be of further assistance, please let me know.

Very truly yours,

J. Emory Smith, Jr.
State Attorney

Footnotes

- 1 See also § 59-19-90(10)(d). No opinion is expressed as to whether this statute would be of any aid to the individual in question.
- 2 Even if the guardianship were sufficient, § 59-63-30 would require the child to reside with that guardian. See an Opinion of this Office dated February 3, 1970. While no Opinion is expressed herein as to whether this child properly 'reside(s)' with this guardian under § 59-63-30, some question exists as to this matter here when the child is 'resid[ing]' with the guardian only for the purpose of attending school. See cases annotated under 83 ALR 2d 518 § 7.

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