

1972 S.C. Op. Atty. Gen. 138 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3317, 1972 WL 20456

Office of the Attorney General

State of South Carolina

Opinion No. 3317

May 24, 1972

***1 The term legal guardian, as used in Section 21–752.1 of the supplement to the 1962 Code of Laws of South Carolina, means either a testamentary guardian or a guardian by judicial appointment.**

Attorney At Law

Lexington, S. C.

In answer to your request for an opinion on the meaning of *legal guardian* as used in Section 21–752.1 of the supplement to the 1962 Code of Laws of South Carolina, I am of the opinion that the term *legal guardian* means either a testamentary guardian or a guardian by judicial appointment. (See 39 Am. Jur. 2nd, Guardian and Ward, II Guardianship of Minors.) While there is no definition of this term in South Carolina statutory and/or case law, the Superior Court of Pennsylvania, in effect, arrived at the same conclusion or definition in an adoption case involving a statute containing the term *legal guardians*:

We are impressed with Appellee's suggestion that the requirement in the Act of the consent of 'the legal guardian' refers exclusively to a guardian appointed by orphan court and not to a testamentary guardian. We are unable to see a distinction. The authority for the appointment of either class of guardian is statutory and both are 'legal guardians.' *In re Adoption Frasch*, 67 A. 2d 830, 165 Pa. Super. 74 (1949).

Under Subsection (a) and (b) of the aforementioned Section 21–752.1, a child must reside with his parent (natural guardian) or legal guardian, and the parent or legal guardian must reside in this school district in order to qualify said child for attendance in that district without charges, unless the child qualifies under Subsection (c). (Note under Code Section 21–230(10)(d) trustees have the authority to prescribe conditions and charges for the attendance of children residing in the district with residents other than their parent or legal guardian.)

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