

1972 WL 25327 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1972

***1 Re: No. 258 Schools in Application for admission, Transfers, etc./Meaning of Legal Guardian (Code Section 21-752.1)**

T. H. Rawl, Jr., Esquire
204 East Main Street
Post Office Box 856
Lexington, South Carolina 29072

Dear Mr. Rawl:

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 guardian:

We are not 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 charge, 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.)

Contact me if I can be of any further assistance.

Yours truly,

Hardwick Stuart, Jr.
Assistant Attorney General

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