



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

November 3, 2003

The Honorable Herb Kirsh  
Member, House of Representatives  
Box 31  
Clover, South Carolina 29710

Dear Representative Kirsh:

In a letter to this office you indicated that the State Volunteer Guardian ad Litem Program was merged with the Foster Care Review Board in May, 2003. Referencing such you have raised the following questions:

1. Is there a conflict of interest for the Volunteer Guardian ad Litem program to be under the supervision of the Foster Care Review Board?
2. Can the Volunteer Guardian ad Litem program fulfill its statutory mandate while under the supervision of the Foster Care Review Board?
3. Can the Governor's office or any other entity in state government legally put the Volunteer Guardian ad Litem program under the supervision of another agency or group without legislative authority?

As set forth in S.C. Code Ann. Section 20-7-121 (Supp. 2002)

There is created the South Carolina Guardian ad Litem Program to serve as a statewide system to provide training and supervision to volunteers who serve as court-appointed special advocates for children in abuse and neglect proceedings within the family court, pursuant to Section 20-7-110. This program must be administered by the Office of the Governor.

Pursuant to S.C. Code Ann. Section 20-7-110 (Supp. 2002), the family court must appoint a guardian ad litem for a child in all child abuse and neglect proceedings. The responsibilities of a guardian ad litem as set forth in S.C. Code Ann. Section 20-7-122 (Supp. 2002) are to:

- (1) represent the best interests of the child;

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- (2) advocate for the welfare and rights of a child involved in an abuse or neglect proceeding;
- (3) conduct an independent assessment of the facts, the needs of the child, and the available resources within the family and community to meet those needs;
- (4) maintain accurate, written case records;
- (5) provide the family court with a written report, consistent with the rules of evidence and the rules of the court, which includes without limitation evaluation and assessment of the issues brought before the court and recommendations for the case plan, the wishes of the child, if appropriate, and subsequent disposition of the case;
- (6) monitor compliance with the orders of the family court and to make the motions necessary to enforce the orders of the court or seek judicial review;
- (7) protect and promote the best interests of the child until formally relieved of the responsibility by the family court.

Pursuant to S.C. Code Ann. Section 20-7-124 a guardian ad litem is charged "with the duty of representation of the child's best interests." By that same provision, specific duties and obligations are imposed on the guardian ad litem. As stated in such provision and as recognized by the court in South Carolina Department of Social Services v. Pritcher, 329 S.C. 242, 249, 495 S.E.2d 242, 245 (Ct. App. 1997), the obligation is "...a continuing one and continues until formally relieved by the court."

S.C. Code Ann. Section 20-7-2379 (Supp. 2002) provides for the creation "...as part of the Office of the Governor, the Division for Review of the Foster Care of Children." A seven member State board is authorized. Pursuant to S.C. Code Ann. Section 20-7-2385 (Supp. 2002) sixteen local boards are authorized "for review of cases of children receiving foster care". S.C. Code Section 20-7-2376 (Sup. 2002) outlines the various functions and powers of the local foster care review boards.

As to your question as to whether the Governor's office or any other entity in state government can legally place the Guardian ad Litem program under the supervision of another agency or group without legislative authority, as set forth, both the Guardian ad Litem program and the Foster Care Review Board have been statutorily placed by the General Assembly within the Governor's office. An opinion of this office dated September 12, 2000 indicated that "...the office of Governor does have the authority to administer the Guardian ad Litem Program." As to the placement of the Guardian ad Litem program under the Foster Care Review Board, such is a matter within the administrative discretion of the Governor's office since both entities are placed within his office. Of course, the legislature could statutorily remove the Guardian ad Litem program from the Governor's office's but absent such removal, it would be a matter within the discretion of that office as to how the Guardian ad Litem program would be administratively handled.

As to your questions regarding whether there is a conflict of interest for the Guardian ad Litem program to be under the supervision of the Foster Care Review Board and whether the Guardian ad Litem program can fulfill its statutory mandate while under the supervision of the Foster

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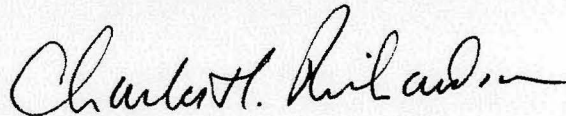
Care Review Board, there are no absolute answers to your questions. The previously noted September 12, 2000 opinion dealt with the issue of whether one who serves as a foster parent would be improperly biased in separate proceedings while serving as a guardian ad litem. The opinion concluded that there did not appear to be any authority suggesting that one who serves as a foster parent would be improperly biased in separate proceedings while serving as a guardian ad litem. The opinion citing Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997) commented that

Court have recognized that accountability of the guardian ad litem is ensured through other mechanisms,...such as: (1) the cross examination of the guardian ad litem by opposing counsel for any potential biases; (2) the appointing court's oversight of the guardian's performance; (3) the prerogative of the court to reject the guardian's findings; (4) the parents' right to move for termination of the guardian; and (5) judicial review of court findings based on guardian recommendations.

Both the Guardian ad Litem program and the Foster Care Review Board have their own statutorily created functions and responsibilities and, as such, care should be taken by both entities so as not to infringe or interfere with the duties and responsibilities of the other. Each program must be allowed to carry out its statutorily mandated functions and the objectivity of each program should be recognized and accommodated. As a result, placement of the Guardian ad Litem program under the Foster Care Review Board must not result in infringement of the duties of a guardian ad litem as expressed in Section 22-7-122. The General Assembly made a conscious decision to place both entities under the Governor's office but such placement does not indicate that the duties of a guardian ad litem can be sacrificed or compromised or the guardian's objectivity infringed. Cooperation between the two programs is obviously warranted so as to avoid conflict in any specific case and to prevent one program from being subservient to the other. As to any specific area of disagreement, I can only recommend that a court resolve any conflict.

With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General