

1983 WL 181883 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 12, 1983

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West Virginia University  
Morgantown, West Virginia 26506

Dear Dr. Holdren:

Thank you for your letter of March 21, 1983. The Attorney General has assigned it to me for reply. Responses to your questions concerning the physically and mentally handicapped are set forth below in the order in which they were presented:

1. South Carolina does have specific definitions for handicapped persons. See, [S.C. Code Ann. §§ 43-29-10\(1\), 43-31-30\(4\), 44-21-30\(4\), 59-33-20\(a\)](#), 1976, and Regulation 88-510 (1982).
2. Your question does not make clear whether you are inquiring as to either proceedings or procedures to determine if a person is physically or mentally handicapped or proceedings or procedures to determine if a physically or mentally handicapped person is mentally competent. Under the laws of this State, the answer to both possible requests is in the affirmative. See, No. 3, *infra*.
3. Because of the ambiguity in question No. 2 above, I have enclosed statutes concerning both possible inquiries so as to allow you to draw the proper conclusion to your specific request. See, [§§ 43-29-20, 43-29-30, 44-17-430 44-21-20 44-21-120, 44-17-410 and 44-17-580 of the Code of Laws of South Carolina \(1976\)](#), as amended.
4. The State of South Carolina does not give special tax considerations to income, gifts and/or inheritance of handicapped persons; however, see, [Section 12-35-550 of the Code of Laws of South Carolina \(1976\)](#), as amended (exemption from sales tax on medicine and prosthetic devices sold by prescription); Section 12-37-220(A)(9) and (B)(2) (homestead exemption); [S.C. Code Ann. § 12-37-250](#) (homestead exemption); § 12-37-290 (General Homestead exemption); and Section 12-37-266(1) (Homestead exemption for dwellings held in trusts).
5. This statement, in a trust instrument, may preclude the reduction or withdrawal of a physically or mentally handicapped person's federal or State benefits to which he/she is entitled, but all applicable laws, federal and State, would have to be examined extensively and carefully to determine the definite effect of a trust (such as the one created by your hypothetical) on a handicapped person's federal or State entitlements.
6. South Carolina law requires that there be three (3) or more witnesses to the signing of a will. See, Section 21-7-50 of the Code of Laws of South Carolina (1976), as amended.
7. A will which has been legally executed out of State in accordance with the laws thereof is valid in this State, and it will have the 'same force and effect as if executed in the manner prescribed by the laws of this State.' See, Section 21-7-70 of the Code of Laws of South Carolina (1976), as amended.
8. South Carolina does provide health care, housing and other social services for the physically or mentally handicapped person. The level of services and/or income provided and their qualifications for entitlement can best be ascertained by directing your inquiries to the following State agencies:  
\*2 South Carolina Department of Mental Health

Post Office Box 485

2414 Bull Street

Columbia, South Carolina 29202;

South Carolina Department of Mental Retardation

Post Office Box 4706

2712 Middleburg Drive

Columbia, South Carolina 29240; and

South Carolina Department of Social Services

Post Office Box 1520

1535 Confederate Avenue Extension

North Complex Towers

Columbia, South Carolina 29202

9. A residential facility for the handicapped which is 'a nonprofit organization organized and existing under the laws of the State and having the corporate power to act as guardian of a mentally retarded person may be appointed guardian . . . ' Section 21-19-240; see generally, Sections 21-19-200-21-19-230 of the Code of Laws of South Carolina (1976), as amended. South Carolina statutes are silent as to whether a residential facility may serve as a guardian or trustee of the physically handicapped. Such statutes are also silent as to whether a residential facility may serve as a trustee for the mentally handicapped.

Please take note that all statutes cited above are enclosed for your convenience. Please send this office a check made payable to the State of South Carolina for \$5.20 for copies of 52 pages at \$.10 per page.

I hope that the answers provided to your inquiries will be of assistance in your endeavor. If we may be of further assistance, please do not hesitate to give us a call.

Very truly yours,

J. Emory Smith, Jr.  
Assistant Attorney General

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