

1976 S.C. Op. Atty. Gen. 86 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4269, 1976 WL 22889

Office of the Attorney General

State of South Carolina

Opinion No. 4269

February 23, 1976

*1 In light of the Constitutional Amendment of 1975 lowering legal age to eighteen, a person eighteen years of age may serve as an executor under Section 19-417.

TO: Honorable F. Ansel Crouch
Probate Judge
Saluda County

QUESTION:

Whether, in light of § 14, Art. 17, of the Constitution of South Carolina, as added by amendment ratified February 6, 1975, and § 19-417 of the 1962 Code, an otherwise duly qualified person eighteen (18) years of age or older may properly serve as an executor.

CITATIONS:

S. C. Constitution, Art. 17, § 14.

§ 19-417 of the 1962 Code.

16 Am. Jur. 2d, Constitutional Law, § 94.

Cooley, Constitutional Limitations (1927)

Black's Law Dictionary (4th ed. 1968)

Basurto v. State, 472 P. 2d 339, 86 Nev. 576 (1960).

[State ex rel Clark v. Harris](#), 144 P. 109

[State v. Wilson](#), 161 S. E. 104, 162 S. C. 413 (1931)

Vol. 17-A, Words and Phrases, p. 469

DISCUSSION:

Art. 17, § 14, of the South Carolina Constitution provides that citizens eighteen (18) years of age or older, in the absence of other disabilities, shall be deemed sui juris. It has been said that sui juris indicates a legal status where one has capacity to manage his own affairs or is not under a legal disability to act for himself. Black's Law Dictionary. The issue at hand is whether the Constitution operates to extend this legal capacity to an eighteen-year-old to serve as an executor, in the absence of other

disabilities; that is, whether the Constitutional provision is self-executing to confer the capacity to serve as an executor upon an eighteen-year-old.

§ 19–417 of the 1962 Code provides as follows:

No executor shall take upon himself the administration of any will or devise unless he be of the full age of twenty-one years. (Emphasis added).

Black's Law Dictionary defines 'full age' as the 'age of legal majority' and continues by indicating that that age was twenty-one years at common law. Cf. Vol. 17–A, Words and Phrases, p. 469. The courts have recognized this interpretation and, in at least one case, where the statutory age of adulthood was eighteen, a criminal statute providing for punishment of violators of 'full age' was construed as meaning the age of adulthood. [Basurto v. State](#), 472 P. 2d 339, 86 Nev. 567 (1970).

With these points in mind, it is necessary to consider when and in what circumstances a constitutional amendment will be self-executing. Where the constitutional provisions requires no further action of the Legislature to ensure that the right created is enjoyed and protected, the provision will be considered self-executing. Vol. I, Cooley, Constitutional Limitations, pp. 165–172; 16 Am. Jur. 2d, Constitutional Law, Section 94; [State ex rel Clark v. Harris](#), 144 P. 109. Further, [The constitutional provision] must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action . . . 16 Am. Jur. 2d, Constitutional Law, § 94.

*2 It is submitted that no additional legislative action is necessary to reconcile the term 'full age' in § 19–417 of the 1962 Code and Art. 17, § 14, of the South Carolina Constitution, as amended, with respect to executors. The phrase 'full age' receives a judicial construction of the age of majority, and the Constitution now sets that age as eighteen years. Consequently, the courts may construe the provisions relating to Section 19–417 with regard to executors as now referring to the age of eighteen years, without necessitating legislative action.

Admittedly, the statute reads, 'full age of twenty-one years'. It is accepted in South Carolina, however, that it is the duty of the courts to harmonize a statute with a Constitutional provision wherever possible. [State v. Wilson](#), 161 S. E. 104, 162 S. C. 413 (1931). As a result, it is submitted that the underlined words 'of twenty-one years' were merely a statement by the Legislature that the 'full age' at the time of enactment of Section 19–417 was twenty-one years. Under the reasoning set forth herein, the phrase 'full age' controls, and that age with respect to executors is now eighteen years, assuming no other disabilities.

CONCLUSION:

The Constitutional Amendment providing, inter alia, that every citizen who is eighteen (18) years of age or older shall be deemed sui juris and endowed with full legal rights and responsibilities, is self-executing with respect to executors as set forth in § 19–417 of the 1962 Code. In the opinion of this Office, an otherwise duly qualified person who is eighteen (18) years of age or older may properly serve as an executor.

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