

1978 WL 35152 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 5, 1978

***1 RE: Opinion request**

E. D. Goodwin, Jr.
Comptroller
South Carolina Retirement System
Post Office Box 11960
Columbia, South Carolina 29211

Dear Mr. Goodwin:

You have asked whether the Letters of Guardianship, issued out of the estate of Patricia K. Goodson, appointing Grady C. Kinard as guardian for John William Goodson, IV, minor, would be applicable so that Mr. Kinard could accept pre-retirement death benefits on said minor's behalf which death benefit is the result of the death of your member Mattie Joyce Harter.

It is the opinion of this Office that Mr. Kinard would be considered a proper legal guardian to receive the retirement benefits payment if two conditions are met. First, Grady C. Kinard has not been discharged as the minor's guardian by the Probate Court for Barnwell County. Second, the amount of his bond comports with S.C. Code Ann. § 21-19-40 (1976), using the total amount of the minor's previous estate plus the retirement benefits proposed to be given him as the corpus which the bond must be either 1 ½ or 2 times the amount of, depending on the type of bond used.

The wording on the form number 1024 'Letters of Guardianship' issued by the Probate Court for Barnwell County, a copy of which you sent me with your question, is archaic and seems, I agree, to appoint Mr. Kinard as the minor's guardian only for the minor's interest in the estate of Patricia Goodson. However, there is provision in our Code for only one type of guardian and Mr. Kinard seems duly appointed to that office.

Inquiry of the Probate Court of Barnwell County should be made by the Retirement System to find out if Mr. Kinard has been formally discharged and, if not, whether his bond will be sufficient after the retirement benefits are paid to him (the Court may require Mr. Kinard to increase his bond under S.C. Code Annot. §§ 21-19-10 and 21-19-40 (1976), in order to protect fully the minor). If Mr. Kinard has not been discharged and if the Probate Court for Barnwell County is satisfied about the amount of his bond, you may pay Mrs. Harter's death benefit to Mr. Kinard as guardian for John William Goodson, IV.

If Mr. Kinard has been discharged, additional Letters of Guardianship will have to be issued appointing him to that office again.

It is further the opinion of this Office, assuming the amount of money involved warrants the expense, that the Retirement System should, when a minor who has no guardian is the designated beneficiary of a deceased member's benefits, petition the Probate Court in the County in which the minor resides for the appointment of a guardian specifically to receive those benefits. There would be fees involved and the guardian would have to post a bond. If the amount of money involved doesn't warrant this precaution, a payment directly to such minor, where the minor is the lawfully designated beneficiary of the pre-retirement death benefit, in all likelihood would not result in any future liability for the Retirement System, although there are some unresolved legal aspects to such payment.

*2 If I may be of any further help to you in this matter, please let me know.

Yours truly,

William P. Simpson
State Attorney

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