

1975 WL 29660 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1975

***1 In Re: Age of Majority Under Certain Statutes**

Honorable A. Ray Hinnant
Probate Judge
Richland County
Columbia, South Carolina

Dear Judge Hinnant:

You have asked several questions relating to the effect of a State Constitutional Amendment, ratified by the General Assembly February 6, 1975, making those persons eighteen years old sui juris.

I.

SHOULD A PUBLIC GUARDIANSHIP ESTABLISHED UNDER SECTION 31-101, ET SEQ., 1962 CODE OF LAWS OF SOUTH CAROLINA, BE TERMINATED FOR PERSONS EIGHTEEN YEARS OLD?

Section 31-101, et seq., provides that the probate judge of a county may be appointed guardian of the estate of a 'minor' in specified circumstances. Your question relates to such persons who are between 18 and 21 at the present time.

It appears clear that the subject amendment is self-executing insofar as Sections 31-101, et seq., are concerned.

'A constitutional provision may be said to be self-executing if it supplies a rule by means by which the right given may be enjoyed and protected, or the duty imposed may be enforced; - - -' Cooley, Constitutional Limitations, V. 1 (1927) pp. 165-172.

'Constitutional provisions are self-executing where it is the manifest intention that they should go into immediate effect and no auxiliary legislation is necessary to the enjoyment of a right given or the enforcement of a duty or liability imposed' State ex rel Clark v. Harris, 144 P. 109.

In view of the foregoing, it is the opinion of this Office that the term 'minor' within the meaning of Sections 31-101, et seq., contemplates persons under eighteen years of age, and that guardianships created under such Sections should be terminated by proper order [Sec. 31-109] when the minor reaches his majority at age eighteen.

II.

ARE GUARDIANSHIPS OF THE ESTATE AND THE PERSON TERMINATED AT AGE EIGHTEEN?

The rationale of the answer to Question I would apply to statutory guardianships of the person and estate, insofar as public guardianships by a probate judge under Sections 31-101, et seq., are concerned. Guardianships of both the person and estate should end upon proper order. See In Re Morgan, In Re Donka, 122 N.J. Super 117 [1973].

III.

IS IT REQUIRED THAT A GUARDIAN-AD-LITEM BE APPOINTED
FOR AN EIGHTEEN-YEAR-OLD IN LEGAL PROCEEDINGS?

Section 10-231, 1962 Code of Laws of South Carolina, provides:

‘When an infant is a party [to a civil action] he must appear by guardian ad litem . . .’

An ‘infant’ within the meaning of Section 10-231 is a person under eighteen years of age.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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