

1975 S.C. Op. Atty. Gen. 199 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4131, 1975 WL 22427

Office of the Attorney General

State of South Carolina

Opinion No. 4131

September 24, 1975

*1 The provisions of Section 19–402, South Carolina Code of Laws of 1962 (as amended) are mandatory upon a judge of probate and a temporary administrator appointed pursuant to Section 19–402 does not have the authority to pay the debts or distribute the assets of the intestate's estate.

TO: Marguerite S. Kinard

Probate Judge

Colleton County

QUESTION PRESENTED:

Does Section 19–402, South Carolina Code of Laws of 1962 (as amended) require a judge of probate to issue temporary letters of administration or letters testamentary upon an ex parte petition; and,

Is a holder of temporary letters of administration or letters testamentary authorized to pay debts or distribute the assets of the estate?

AUTHORITIES:

Section 19–402, South Carolina Code of Laws of 1962 (as amended);

2A Statutes and Statutory Construction*, § 57.03;

[Kaminer v. Hope](#), 18 S.C. 561 (1883);

[Stevenson v. Wilcox](#), 16 S.C. 432 (1883).

DISCUSSION:

I. Section 19–402, South Carolina Code of Laws of 1962 (as amended) reads as follows:

‘The judge of probate of each county of this State shall, upon an ex parte petition, issue temporary letters of administration and temporary letters testamentary pending the publication of citation or the taking of any other prerequisite legal step and without giving notice of such temporary appointment. Upon the ex parte petition and granting of any temporary letters as provided for herein such person shall enter into such bond to protect the property and estate as the judge of probate may fix or as is required by law to permanent letters. Upon the granting of such temporary letters the person to whom such letters are issued shall have all the powers now conferred upon an appointee after legal citation.’

The wording of this section is clear and unambiguous and there is no indication that the word 'shall' was intended to be given a meaning different from its ordinary meaning. In such a context, the rules of statutory construction require that a word be given its ordinary meaning. 2A Statutes and Statutory Construction ^{*}, § 57.03.

The word 'shall' is ordinarily used in a statute to make that statute mandatory rather than merely directory, and such is the meaning which must be given to the word 'shall' in Section 19-402. Therefore, it is the opinion of this Office that Section 19-402 is mandatory upon a judge of probate.

II. The question of the authority of a temporary administrator to pay the debts or distribute the assets of the estate has been answered by Kaminer v. Hope, 18 S.C. 561 (1883). There, an administratrix pendente lite had been appointed, and the question arose as to whether or not she was a proper representative of the estate to maintain an action to recover a debt due the intestate's estate. In answering this question, the court restated the opinion of the court in Stevenson v. Wilcox, 16 S.C. 432:

*2 ' . . . such an administrator (pendente lite) was accountable only to the general administrator, and not to the creditors or distributees, as he had no authority to pay debts or distribute the assets . . . ' 18 S.C. 561 at 575-576.

The court concluded that an administratrix pendente lite could maintain an action to recover a debt due the estate but lacked the authority to pay the debts or distribute the assets of the estate.

Since an administrator pendente lite is a temporary administrator, the holding in Kaminer v. Hope will restrict the authority of a temporary administrator appointed pursuant to § 19-402.

CONCLUSION:

Therefore, it is the opinion of this Office that the provisions of Section 19-402, South Carolina Code of Laws of 1962 (as amended) are mandatory upon a judge of probate and that a temporary administrator appointed pursuant to Section 19-402 does not have the authority to pay the debts or distribute the assets of the intestate's estate.

Raymond G. Halford
Assistant Attorney General

Footnotes

* Sutherland (4th Ed.)

1975 S.C. Op. Atty. Gen. 199 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4131, 1975 WL 22427