OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John H. Winters
Executive Director
State Department of Public Welfare
Austin 3, Texas

Dear Sir:

Opinion No. O-6549
Re: Guardianships of persons receiving funds from the State and/or Federal Government

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"We shall appreciate your consideration and opinion as to the interpretation the department should place upon Senate Bill 125, Acts of the 47th Legislature, Regular Session.

"In October 1942 we asked for an opinion and interpretation of this law in relation to the authority of a guardian who was appointed under the special provisions of the law to act as the guardian in respect to all of the estate of the ward. Reference is made to your Opinion No. O-4949.

"The question now confronting the Department is in relation to the position to be taken by the Department when a guardian, who has been appointed in conformity with Senate Bill 125, is discharged or dies. When a guardian is appointed by the Court and the Department receives official Letters of Guardianship or the official Certificate from the County Clerk, all subsequent checks are made payable to the guardian. This is true when the guardianship is made in compliance with Senate Bill 125 or is predicated

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upon a lunacy trial. If there has been a lunacy trial and the recipient adjudged insane, the Department requires either a certificate from the Clerk showing the restoration of the sanity of the recipient or new Letters of Guardianship. The Department does not attempt to influence the decision as to which procedure would be applicable as this is left entirely to the discretion of the Court and the parties involved.

"Senate Bill 125 makes provision for the appointment of a guardian for persons who are senile and who are incapable of handling their own affairs. The law specifically states the purpose of permitting this procedure is to enable recipients to receive funds from the State and/or Federal Governments without the necessity of a lunacy trial. If after such a guardian has been appointed the guardian dies prior to the death of the recipient, or if for some reason the guardian petitions the Court for discharge, does the Department of Public Welfare have the responsibility of requiring either the appointment of a new guardian, or a statement or certificate, or decree of the Court stating that the person is no longer in need of a guardian? We recognize the fact that since there was no lunacy trial, there would not be an order of restoration of sanity.

"The Department has always considered that it was necessary for us to obtain new Letters of Guardianship or a decree from the Court before future warrants could be issued to the recipient. Can the Department require any official action of the Court before issuing future warrants, or is the Department to consider the recipient in the same position as he was in prior to the appointment of the original guardian without any further action on the part of the Court?"

On October 30, 1942, this department, in Opinion No. O-4949, in answer to an opinion request of Hon. J. S. Murchison, Executive Director, State Department of Public Welfare, construed Senate Bill 125, Regular Session, 47th Legislature of Texas, with respect to guardianships of incompetent persons.

Mr. Murchison's request for opinion was in part as follows:

> "Senate Bill 125, Acts of the 47th Legislature, Regular Session, makes provision for the types of persons for whom a guardian may be appointed, enumerating them as ' . . . minors fourteen (14) years of age or over, persons alleged to be of unsound mind or habitual drunkards, and persons for whom or for whose estates it is alleged to be necessary to have a guardian appointed to receive funds from the State and/or Federal Government. . .'
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> "The law makes further provision for the procedure to be followed in establishing the necessity for appointment of a guardian in order that the person may receive State and/or Federal funds.
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> "Senate Bill 125, Section 4, also makes provision for the appointment of a successor guardian in the event the guardian dies, resigns, or is removed.
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> "The question has come before us in the case of an old age assistance recipient who on June 20, 1918 was declared mentally incompetent and a guardian appointed for her. The guardian filed bond, inventory, appraisal and list of claims; however, so far as the records show the guardian did not make any other report to the Clerk or did not make final accounting. The guardian is dead, and our recipient, although still mentally incompetent has been receiving assistance in her own name for the past three or four years. It is admitted that she is still not competent to take care of her own affairs.
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> "Can the Court appoint a guardian upon the certificate of the Executive Director of this Department or his representative as provided for in Senate Bill 125? If so, is this guardian responsible for the entire estate of the recipient or just that particular part which she receives from the State and/or Federal Government? In other words, does the appointment of a

guardian under Senate Bill 125 for the purpose of receiving Federal and/or State funds mean that the authority of a guardian so appointed is limited to the receipt and expenditure of the funds received from the State and/or Federal Government or is the guardian so appointed responsible for the entire estate.

"Since the person has not been actually adjudged incompetent, does the guardian have the authority to act in any respect other than for the purpose of receiving and expending these said funds?"

This department in Opinion No. O-4949, written by Hon. Ocie Speer, Assistant Attorney General, in answer to Mr. Murchison's request, advised as follows:

"S.B. No. 125 is an amendment of various Articles of Revised Civil Statutes, 1925, under the provisions of which undoubtedly the County Court, having jurisdiction thereof, is authorized to appoint a guardian for one of unsound mind, when necessary to receive funds or money due from the State and/or Federal Government. (Arts. 4116, 4121, 4126 and 4272, as amended in S. B. 125).

"It does not follow from this, however, that the appointment of a guardian of the incompetent's estate is limited to that part of the estate received or to be received from the State or the Federal Government.

"There is nothing in the amendment made by S. B. No. 125 to indicate that the guardianship of the estate granted because of the necessity therefor to receive such State or Federal aid, is other than a general guardianship of the incompetent's estate. The liability of the guardian and his bondsmen upon such letters would extend, therefore, not only to the moneys received from the State and/or Federal Government, but likewise to any other moneys, funds or property whatsoever owned by the ward.

"In such a case the court may act upon the application of any one interested in the proceeding, including, of course, the Executive Director of your department.

"Under the facts of your immediate case, it would not be necessary to institute a new guardianship proceeding, since a successor may be appointed under Article 4228 et seq of the Revised Civil Statutes."

Article 4123, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"At a regular term of the Court, after the issuance and service of process as required by law, the Court may proceed to the appointment of a guardian. Before appointing a guardian, the Court must be satisfied:

"1. That the person for whom a guardian is sought to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds or money due such person from the State and/or Federal Government.

"2. . . .

"3. . . .

"4. That the rights of persons or property are to be protected. All issues herein shall be determined by the Court on hearing, unless a jury is demanded; but it shall not be a prerequisite to such appointment that there has been a jury trial, verdict and judgment that the person is of unsound mind, or is an habitual drunkard, nor is such person required to be present at the trail. . . .

"The remedy herein provided is cumulative of that provided in Chapter 12 hereof, for the guardianship of persons of unsound mind and habitual drunkards, and may be resorted to without invoking the latter remedy. As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 2."

Article 4123a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"When a petition is filed for the appointment of a guardian for a person for whom it is necessary to have a guardian appointed to receive funds or money from the State and/or Federal Government, a certificate of the executive head, or his representative of the bureau, department, or agency through which such funds are to be paid, to the effect that the appointment of a guardian is a condition precedent to the payment of any moneys due such persons, shall be prima facie evidence of the necessity for such appointment. Acts 1941, 47th Leg. p. 867, ch. 541, § 6."

Article 4128, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

". . . The guardian of a person of unsound mind, or of an habitual drunkard, shall continue as such, unless sooner discharged according to law, until the ward shall die or be restored to sound mind or to sober habits. The guardian of a person for whom it is necessary to have a guardian appointed to receive funds or money due from the State and/or Federal Government shall continue as such, unless sooner discharged according to law, until the ward shall die or the necessity for having such guardian no longer exists. As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 3."

Articles 4228 and 4229, Vernon's Annotated Texas Civil Statutes, read as follows:

"Art. 4228 - Death, resignation and removal

"When a guardian dies, resigns or is removed, the Court, on application, and without notice or citation, shall appoint another if there be necessity therefor, and such appointment may be made prior to the filing of, or action upon, the final accounting of such former guardian. As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 4.

"Art. 4229. Resignation

"A guardian who wishes to resign, shall present his written application to that effect to the Court, accompanied by a full and complete final account, duly sworn to, showing the true condition of the estate and of his guardianship. The Court may thereupon immediately accept such resignation and appoint a successor guardian, but shall not discharge such resigning guardian or release him or the sureties on his bond until the entire estate due the ward is delivered to the successor guardian, and final order or judgment shall have been rendered on his final account. As amended Acts 1941, 47th Leg., p. 867, ch. 541, § 4."

We confirm the holding of Opinion No. O-4949 of this department.

Answering your inquiries it is our opinion:

1. In case of death, resignation or discharge of such a guardian as inquired about, the Court on its own motion, or at the instance of anyone interested in the proceeding, including, of course, the Executive Director of your department, could appoint a successor guardian to whom checks due the ward by your department could be sent.

2. If the court judicially determined by valid court decree that the ward's condition was such that he or she was competent and needed no guardian and said decree terminated the guardianship, it is our opinion that you would then be authorized to send to the former ward such checks as were due him or her from your department.

Yours very truly

Attorney General of Texas

/s/

By

Wm. J. Fanning
Assistant

Approved May 14, 1945
/s/ Carlos C. Ashley
First Assistant
Attorney General

Approved Opinion Committee
By G. W. B. Chairman
WJF:BT:ddt