



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 31, 1947

Hon. R. A. Barten,
County Attorney,
Calhoun County,
Port Lavaca, Texas.

Opinion No. V-324

Re: The legality of a cash
bond by a guardian of
the estate of a non
compos mentis.

Dear Sir:

You request an opinion by this Department on the question above stated.

Your letter indicates that the guardian desires "to make a cash bond, conditioned for the faithful performance of his duties as guardian, and to place a sufficient amount of cash in the bank or with the County Clerk subject to the orders of the County Judge" in lieu of sureties upon the bond.

Articles 4140-4142 of the Revised Civil Statutes govern the making of bonds by guardians generally. These articles specifically require the guardian to execute a bond with approved sureties and there is no implication in them or elsewhere in the statutes that such a bond is not essential. Article 4142 specifically provides: "Any bond required . . . shall be subscribed by such guardian and at least two good and sufficient sureties. . ." or one or more corporate sureties. (Emphasis added)

In Moore vs. Hanscom, 103 S. W. 665, it is said:

" . . . when a guardian's bond is reduced to a sum considerably less than the value of the ward's property in total disregard of the statute, such action must be held null and void."

The Court, however, quoted Woerner, American Law of Administration, as follows:

"Even a voluntary bond, if not in contravention of public policy or statutory law, is binding on the makers; hence a bond given for the performance of a trust reposed, whether public or private, is valid, and though inoperative as a statutory guardian's bond, will be good as a common law bond." (Emphasis supplied)

Even though this pronouncement be a correct proposition of law, yet we would not advise that the County Judge accept the proffered money security for he has no such authority. The proper course to pursue would be for the guardian to execute the statutory bond with a surety or sureties as required by Article 4142.

SUMMARY

A county judge is not authorized to accept the personal bond of a guardian of the estate of a non compos mentis secured by a deposit of cash with the Court or under its direction in lieu of a bond with sureties as required by the statutes. Rev. Civ. Stat., Arts. 4140-4142.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



Cole Speer
Assistant

OS:wb

APPROVED:



(Acting) ATTORNEY GENERAL