

Opinion No. 47-5096

November 6, 1947

BY: C. C. McCULLOH, Attorney General

TO: P. H. Robinson, Jr. Director New Mexico Veterans' Service Commission Santa Fe, New Mexico

{*104} We wish to acknowledge receipt of your letter of October 16, 1947, {*105} with enclosure from the Regional Office of the Veterans Administration, Albuquerque, New Mexico, wherein an opinion of this office was requested on the following question:

Is the New Mexico guardian of a minor's estate legally obliged or justified in turning over the assets in its hands to the ward who has now attained his or her majority according to the laws of some other state where he or she is presently residing, but has not as yet attained the age of twenty-one years?

My answer is no. According to the laws of New Mexico, a minor does not attain majority until he or she reaches twenty-one years of age. (See Attorney General's Report, 1915-16, page 194) Chapter 186, Laws of New Mexico, 1947 did remove the disability of any minor insofar as his securing a loan pursuant to the Servicemens' Readjustment Act of 1944, as amended. However, this Act is limited to the above purpose and no greater rights or liabilities are imposed insofar as the minor is otherwise concerned.

The guardian of the minor's estate in New Mexico was appointed by a New Mexico court and said guardianship must be terminated in accordance with the laws of New Mexico. Inasmuch as a minor does not attain majority until reaching 21 years of age, the guardianship, in my opinion, cannot be terminated until the minor reaches such age, insofar as property of the minor is concerned. (See Section 35-105 of the New Mexico 1941 Compilation)

It is quite true that Section 35-141 of the New Mexico 1941 Compilation provides that guardianship over men and women shall cease with their marriage, but the Supreme Court of this state has held, on two occasions, that this statute refers only to the guardianship over the person and not to guardianship of the estates of minors. (See *Montoya de Antonio v. Miller*, 7 N.M. 289, 34 P. 40; 21 L.R.A. 699; *In re Hays' Guardianship*, 37 N.M. 55, 17 P. 2d 943)

My opinion would in no way be changed if part of the assets of the ward's estate in New Mexico consisted of real property located in the State of New Mexico.

Nor would my opinion be altered in any way if the attainment of majority in the state of residence was due to the marriage of the ward.

As previously stated, the termination of a guardianship over New Mexico assets belonging to a minor can only be terminated in accordance with the laws of the state of New Mexico, and merely because the ward acquires residence in another state whose laws consider it an adult has no bearing on the New Mexico guardianship.

Trusting the aforementioned satisfies your inquiry, I am,

ROBERT V. WOLLARD,

Asst. Atty. General