

Opinion No. 72-52

September 28, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Winston Roberts-Hohl,
Assistant Attorney General

TO: Honorable Edward C. Walterscheid, Probate Judge, 2300 Trinity Drive, Los
Alamos, New Mexico 87544

QUESTIONS

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What is the jurisdiction of a probate judge in the matter of appointing a guardian for a minor in the probate of an estate by that probate judge? Specifically, does Section 13-14-9, N.M.S.A., 1953 Comp. (1972 Interim Supp.) of the Children's Code remove jurisdiction from the probate court which previously had been accorded by Sections 32-1-7 and 30-2-7, N.M.S.A., 1953 Comp.

CONCLUSION

A probate judge no longer has jurisdiction to appoint a guardian for a minor in proceedings before him.

OPINION

{*83} ANALYSIS

Section 13-14-9 (B) (5), **supra**, reads as follows:

"B. The court [children's court division of the district court] has exclusive original jurisdiction of the following proceedings under other laws which will be controlled by the provisions of the other laws without regard to provisions of the Children's Code:

* * *

(5) to determine the custody of, or to appoint a custodian or a guardian for a minor . . ."

This subsection clearly contemplates interaction of the Children's Code with provisions of other laws. Manifest also is the legislative intent that the children's court control in the appointment of a custodian or guardian for a minor be exclusive even though the proceedings might be controlled by provisions of other laws.

We are of the opinion that the provisions of the Probate Code dealing with the appointment of guardians under Section 32-1-7 and 30-2-7, **supra**, come within the

purview of subsection 5 and are controlled by it. It is well established that when one statute deals with the subject matter in general terms and another deals with a part of the same subject matter in a more definite way the latter statute controls. **State v. Spahr**, 64 N.M. 395, 328 P.2d 1093 (1958).

In addition it is our opinion that subsection 5 above manifests a clear intent of the legislature to supersede the portions of the Probate Code which dealt with appointment of guardians for minors. **Ellis v. New Mexico Const. Co.**, 27 N.M. 312 (1921). It is our conclusion then that Section 13-14-9, **supra**, in the Children's Code removes the jurisdiction of the probate court which was previously accorded by Section 32-1-7 and 30-2-7, **supra**.