OPINION
71-220

July 26, 1971 (OPINION)

Mr. Rodney S. Webb

Walsh County State's Attorney

RE: Minors - Guardians - Termination at Majority

This is in reply to your letter of July 20, 1971, relative to the above cited legislative enactment. You state the following facts and questions:

> At the request of the Walsh County Court, we would ask your opinion concerning the relevance of the recently passed law, referred to above, as it might apply to termination of guardianships.
>
> Presently, the Court has before it several guardianships for the estates and persons of male individuals who have attained their 18th birthday but who have not as yet attained their 21st birthday.
>
> Our question is as follows:
>
> > May guardianships, established because of minority of male persons, be terminated when such male persons attain the age of eighteen (18) years?"

Chapter 145 of the 1971 Session Laws amends sections 14-10-01 and 14-10-02 of the North Dakota Century Code to provide that minors are persons under eighteen years of age and all persons eighteen years of age and over are to be considered adults. Prior to this amendment, these sections provided that females over the age of eighteen were to be considered adults and males over the age of twenty-one were to be considered adults.

In replying to your question, we believe the following statutes are pertinent:

Section 30-10-15 of the North Dakota Century Code provides:

> WHEN POWER OF PARENTAL GUARDIAN SUPERSEDED. The power of a guardian appointed by a parent is superseded:
>
> 1. By his removal by the court for cause;
>
> 2. By the solemnized marriage of the ward; or
>
> 3. By the ward's attaining majority."

Section 30-10-16 of the North Dakota Century Code provides:

> WHEN POWER OF COURT GUARDIAN SUSPENDED. The power of a guardian appointed by a court is suspended only:

1. By order of the court;

2. If the appointment was made solely because of the ward's minority, by his attaining majority; or

3. In guardianship over the person of the ward, by the marriage of the ward."

Section 30-12-10 of the North Dakota Century Code provides:

> DISCHARGE OF GUARDIAN. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority."

Section 30-12-11 of the North Dakota Century Code provides:

> WARD'S POWER ON MAJORITY. After a ward has come to his majority, he may settle accounts with his guardian and give him a release which is valid if obtained fairly and without undue influence."

Several of these sections were construed by our Supreme Court in Christenson v. Grandy, 46 N.D. 418, 180 N.W. 18 (l920). The Court at page 21 of the NW Reporter, stated:

> "While, of course, the guardian may, even after the ward attains majority, still have in his possession property belonging to the ward, and be under obligation to deliver the same as well as to account for funds and property received during the course of his administration, there can be no question but that the control of the guardian ceases when the ward arrives at majority. When the ward reaches majority he stands, so far as his legal rights and obligations are concerned, the same as any other person of similar age. He may make contract, sue, and be sued. He is no longer under guardianship. That is terminated."

Therefore, in direct reply to your question, it is our opinion that if a guardianship is established only because of minority of male persons, such guardianship is terminated when such male persons attain the age of eighteen years.

We would also note, however, that the cases make a distinction between the termination of the guardianship as between the guardian and ward and actions upon the surety bond of the guardian, etc. This distinction was made in the Christenson case, supra, which discussed the holding in Gronna v. Goldammer, 26 N.D. 122, 1443 N.W. 394 (1913).

The Court in the Gronna case stated, page 397 of the N.W. Reporter: "It seems quite clear from a perusal of these sections that the Legislature intended that upon the arrival of the ward at his majority the control of the guardian over him should be as between the guardian and the ward be suspended; but there should be no actual discharge without a formal order of the court and a determination by that court that the ward had in fact reached such majority, and that

even that discharge could not be obtained as a matter of right until a year after majority."

The decisions in the two cases relied upon the words "termination of the guardianship" and "discharge of the guardian." The Court held that termination occurred when the ward reached majority but discharge or removal required an affirmative act by the court appointing the guardian. Thus if a guardian wishes the statute of limitations to apply in actions against the guardian on his bond, the guardian must seek a formal discharge from the court.

I trust this will adequately set forth our position on the matter presented.

HELGI JOHANNESON

Attorney General