

**LAW LIBRARY  
ARIZONA ATTORNEY GENERAL**

April 26, 1952  
Op. No. 52-117

*Ms How 4/24/52*

Mr. Robert Morrison  
County Attorney  
Pima County  
Tucson, Arizona

Dear Mr. Morrison:

This will acknowledge receipt of your letter concerning admission to the Arizona School for Deaf and Blind of a child who was born in Mexico and has lived there to date. The question as set forth in your letter was as follows:

" \* \* \* can a citizen and resident of this country by becoming the guardian of said minor make this minor a person who can be accepted by the school even though the express purpose of the guardianship is to bring the child into this country to be placed in the afore-said institution."

*15-834 ARS*

Section 54-1524 provides for admission of qualified children from other states and countries upon payment of a sum fixed by the school board. Our assumption, therefore, in answering your letter is that the intention is to place the child in the School through the appointment of a guardian to avoid payment of a charge.

Section 54-1520, ACA 1939, reads as follows:

"Persons required to attend school.--  
All persons from six to eighteen years of age inclusive, whose parents or guardians are residents of this state, and who by reason of partial or total blindness or deafness are unable to obtain an education in the

public schools of this state, shall under the provisions of this act be required to attend the Arizona State School for the Deaf and the Blind, unless such persons are being privately educated, or unless they are not subjects for admission to the deaf and blind institute of the state of Arizona." (Emphasis supplied)

Section 54-1521 continues:

"Compulsory education--Penalty.--  
Any guardian, parent or other person having charge of a child of school age not physically or mentally disqualified, refusing to send such child to school during the compulsory years, shall be fined from five (\$5.00) to twenty-five dollars (\$25.00), to which may be added imprisonment in the county jail from five (5) to ninety (90) days. \* \* \* " (Emphasis supplied)

A guardian, therefore, must send a child under his or her care to this school if the child comes within the provisions of the Act or face the possibility of being prosecuted for failure to comply with the law.

Section 42-113, ACA 1939, so far as material herein, reads:

"Powers--Power over property by appointment only--Survivor.--  
A guardian appointed by the court, has power over the person and property of the ward, unless otherwise ordered. \* \* \* "  
(Emphasis supplied)

Section 42-114 continues:

"Duties of guardian--Care of real property.--A guardian of the person is charged with the custody of the ward, and shall look to his

support, health and education.  
\* \* \* " (See also In re Harris,  
17 Ariz. 405)

Since the guardian is charged with the education of his ward the school authorities could not properly deny admission to the child if otherwise qualified unless the propriety of the guardianship could be attacked.

On this subject 39 Corpus Juris Secundum, Sec. 38, p. 59, reads:

"Operation and effect of Appointment

The decree of a court of competent jurisdiction, until reversed, vacated, or set aside, is conclusive as to all matters properly before the court for consideration when the appointment was made. Except where lack of jurisdiction is apparent on its face, the decree cannot be collaterally attacked.

\* \* \* \* \*

Against a collateral attack all presumptions are in favor of the regularity of the proceedings; and it will be presumed that all the facts necessary to vest the court with jurisdiction to make such appointment had been found to exist before it was made, even if such facts are not recited, and, a fortiori, where they are." (See also In re Kimball's Guardianship, 182 P. 2d 612)

It is therefore our opinion that once a court of competent jurisdiction has appointed a person guardian of a child, the authorities of the Arizona State School for Deaf and Blind could not challenge the right of the guardian to send his ward to this school on the ground that the appointment of guardian was made expressly for that purpose.

Mr. Robert Morrison  
County Attorney

April 26, 1952  
Page four

Trusting this will be of some help in answering  
your question, we are

Sincerely,

FRED O. WILSON  
Attorney General

ALFRED C. MARQUEZ  
Assistant Attorney General

ACM:mw

52-117