

GUARDIANS--WARDS: Estate of World War Veterans are invested--
How.

11-23

November 20, 1933



Mr. Ray J. Cunningham
Chief Attorney
Veterans Administration
4030 Chouteau Avenue
St. Louis, Missouri

Dear Sir:

We wish to acknowledge your request for an opinion dated November 1st, which was in the following form:

"It is desired to secure from your office an opinion concerning the question of investment by guardians of incompetent veterans and wards of the Government in so-called Home Owners' Loan Bonds.

In this connection your attention is invited to a letter addressed to all Field Offices of the Veterans' Administration by Frank T. Hines, Administrator of Veterans' Affairs dated October 16, 1933, which is enclosed herewith.

The propriety and legality of investment of trust funds must necessarily depend upon Section 418 Revised Statutes, State of Missouri, which sets out the specific types of investment allowed by law in estates under guardianship. Thus far there has been no enabling Act passed by the legislature permitting a re-investment in Home Owners' Loan Bonds, however in many instances there is no question but that an exchange would work for the protection of estates which now have real estate mortgages.

Your consideration and advice concerning the above will be greatly appreciated."

Section 418 R. S. No. 1929 provides as follows:

"Guardians and curators shall, unless the money be invested in improving the real estate of the wards as hereinafter

provided, loan the money of their wards at the highest legal rate of interest that can be obtained, on prime real estate security, or invest it in bonds of the United States, or of the state of Missouri, or of the federal farm loan bank except where the estate is less than three hundred dollars, in which case good personal security may be taken, and shall account for all such interest received, which shall be charged in their annual settlements; the interest in such cases shall be paid annually, and if not then paid shall become a part of the principal and bear interest at the same rate; and it shall be the duty of the court to require every guardian and curator to make a report at every annual settlement of the disposition made by the guardian or curator of the money belonging to the ward intrusted to him, and if it appear that such money is loaned out, then he shall state the name of the person to whom loaned, the description of the real estate security, and where situated, and its value, which report shall be sworn to by said guardian, or curator and filed in the court; and it shall be the duty of said court to carefully examine into such report as soon as made, and if in the opinion of said court the security is insufficient, it shall be the duty of the court to require additional security to be given sufficient to protect the interest of said wards, and if such additional security be not given within such time as the court shall order, not exceeding ten days, it shall be the duty of the guardian or curator to institute suit forthwith on such security to recover the amount due thereon, and he and his sureties shall be liable on their bond for any omission so to do; and if such money has not been loaned out, the guardian or curator shall state such fact and the reasons, which report shall be sworn to, and shall, unless the money be invested in improving the real estate of the wards as hereinafter provided, state that such guardian or curator has been unable to make loan after diligent effort to do so, and if

any guardian or curator shall refuse or neglect to make such report at the time aforesaid, or shall make a false report thereof, he and his sureties shall be liable on their bond for all loss or damage to such ward occasioned by reason of such neglect or refusal so to report, or by the making of such false report, and such guardian and curator may, on account thereof, be removed from his trust in the discretion of said court: Provided, however, that whenever it shall appear that it would be for the benefit of the ward that his real estate, or any part thereof, should be improved, the probate court, upon the petition of the guardian or curator, may, after full examination, on the oath of credible and disinterested witnesses, authorize the investment of the money of the ward, or any part thereof, in the improvement of said real estate, under such regulation as the court shall consider suited to the case: Provided further, that such improvement shall in no case exceed the sum of money actually on hand and available for such purpose at the time of making of such order; and the sum so set apart shall in no case interfere with the fund needed for the education and maintenance of such ward or wards."

Our Supreme Court in the case of *In Re Farmers' Exchange Bank of Gallatin*, 37 S. W. 936, l. c. 942, while interpreting the above section spoke as follows:

"Section 418, above quoted, speaks in no uncertain terms with reference to the manner in which the funds in the hands of a guardian and curator must be invested. If funds are otherwise invested, except as provided by statute, it is unlawful. Even the probate court cannot legally authorize the investment of such funds, except as prescribed. Therefore, the action of the bank, with full knowledge of the situation in this case, in taking the money of the wards and attempting to give the guardian and curator

worthless notes in lieu thereof, was not only a violation of the bank's agreement, but was contrary to the provisions of the statute referred to. Such conduct of a third person in dealing with property of a ward cannot be ratified by the guardian and curator on behalf of the ward. Plaintiff had no power or authority to waive any right the wards may have had against the bank or the finance commissioner. She was legally bound to exhaust every legal remedy available to redeem the wards' property."

It is the opinion of this office that the law of Missouri regulating the matter in which funds in the hands of the guardian must be invested does not permit the guardian to reinvest the wards' estate in Home Owners' Loan Bonds. The law now in force in Missouri provides in detail the securities that can be the subject of investment by a guardian, and Home Owners' Loan Bonds are not included in the designated list. The guardian having no direct authority to invest in this security, it follows that he has no authority to reinvest, for he cannot legally execute a power to do indirectly an act, when the Legislature did not give the guardian the power to so act directly. The same rule in Missouri applies to estates of all wards. There is no separate rule affecting wards who happen to be world war veterans having an estate under guardianship.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

WOS:H

ROY McKITTRICK
Attorney General.