

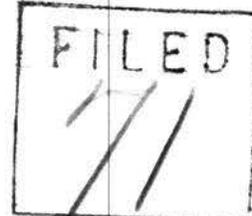
GUARDIANS:  
CURATORS:  
REAL ESTATE OF WARDS:  
MANAGING OF:

A guardian of an insane ward may convey mineral rights of ward's real estate but should follow the statutes relating to conveyance of real estate for his procedure.

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May 24, 1939

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Mr. John W. Porter  
Circuit Clerk and Recorder  
Clinton County  
Plattsburg, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion based on the following letter:

"I am writing to you for an opinion as to whether or not the Probate Court has the right to approve the sale by Guardian of an insane ward of oil and gas lease or an interest in the royalty rights of the ward. As royalties are conveyed by mineral deeds, would there be any more restriction on the Court approving a mineral deed than exists when the Court approves the sale of land for a guardian, which of course conveys all mineral rights?"

Under the statutes, after a guardian has sold real estate of his ward, he is required to make a report to the probate court and obtain approval of that court before such sale is final and binding on the ward's estate. Section 407, R. S. Missouri 1929, sets out this requirement. It is as follows:

"Whenever any guardian or curator shall sell any real estate belonging to his ward, under an order of

court, he shall report such sale to the court ordering the sale, in the same manner as executors and administrators are then required by law to report sales of real estate made by them for the payment of debts; and such sale, if approved by said court shall be valid to all intents and purposes: Provided, however, that no such sale shall be approved by the court unless the property sold for not less than three-fourths of the appraised value thereof. If the court refuse to approve the report, the order of sale may thereupon be renewed, and the same proceeding shall be had as upon the original order: Provided further, that within ten days after any sale made by a guardian or curator of minors in this state, such guardian or curator shall make a full report of his proceedings, with a certificate of appraisement and a copy of the advertisement, if such sale is made at public sale, which report shall be verified by affidavit stating that he did not, directly or indirectly purchase said real estate or any part thereof, or any interest therein and that he is not interested in the property sold except as stated in said report: Provided further, that such report of sale shall be and remain on file ten days before being acted upon by the court."

A guardian is authorized to sell his ward's real estate under Section 402, R. S. Missouri 1929, which is as follows:

"The probate court shall order the proper education, support and maintenance of minors, according to their

means, and for such purposes may, from time to time, make the necessary appropriations of the money or the personal estate or income of such minor not otherwise provided to be used; and when the money, income or personal estate of such minor shall be insufficient or not applicable to such objects, purpose or purposes, the court may order the lease or sale of the real estate of such minor, or so much thereof as may be requisite, or that said real estate be mortgaged, to raise the funds necessary to maintain, support and educate such minor, or to raise the funds necessary to pay off any pre-existing debts, for which the estate of such minor is legally liable."

And under Section 410, R. S. Missouri 1929, he may sell or lease his ward's real estate.

On the question of the authority of the guardian to lease his ward's real estate, the court, in discussing a lease of a ward's real estate which was made by the guardian for a short term in the case of Richardson, by Guardian, v. Richardson et al., 49 Mo. 29, l.c. 34, said:

"He had no authority, without judicial sanction, to sell his ward's real estate, but he might lease it. \* \* \*"

While the foregoing rule as to the necessity of obtaining an order of court to lease the ward's estate might apply to a lease for a short period of time, we do not think it would apply to a mineral lease which generally extends over a period of years. It seems from our statutes relating to estates of minors and insane persons that the lawmakers have intended to extend the arm of protection over such persons and we think these statutes should be construed in favor of

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such persons when it can be done.

The lease of the mineral rights to real estate affects the title to such property, and this is another reason why the general statutes applicable to sales of real estate of minors and guardians should apply. The Richardson case, supra, also holds that the guardian cannot sell the real estate of his ward without an order of court. This order of court takes with it the report of the sale and the approval by the court, and such sale can only be made when it is authorized by said Sections 402 and 410.

CONCLUSION.

From the foregoing it is the opinion of this department that a guardian may convey, by a lease, the mineral rights of his ward's estate under the conditions named in the foregoing statutes. The probate court, having jurisdiction over the ward, should approve such lease in the same manner that a sale of the real estate of the ward is approved by the court.

This department is further of the opinion that there would be no more restriction on the court in approving a lease conveying mineral rights than exists when the court approves the outright sale of the real estate by the guardian.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General

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