

GUARDIANS OF INSANE:

BONDS:

A bond given by the legally appointed guardian of an incompetent does not make unnecessary the giving of the bond for maintenance at a state hospital as a private patient required by Section 202.863, RSMo Cum. Supp. 1957.

June 11, 1959



Louis Bellinson, M.D.
Deputy Director
Division of Mental Diseases
State Office Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"The following is an excerpt from a letter directed to you thru this office from Dr. A. K. Baur, Superintendent of the Fulton State Hospital:

'In your letter of January 22, 1959, you gave us a decision that a Public Administrator who in the course of his official duty becomes the custodian of an insane person and curator of such person's estate and whose ward is admitted to a state hospital as a private patient is not required to give the maintenance bond which is provided for in Section 202.863, RSMo, Cum. Supp. 1957, because the official bond given him as a Public Administrator covers such a situation.

"We are now in receipt of a letter from Judge Sam Hess, Phelps County Probate Court, which reads in part as follows:

'Since it is very difficult for us to obtain another guardian if Mr. Allison's letters are revoked for cause,

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and since Mr. Allison is already accountable to the court for what he does, and since he appears to have a phobia with respect to giving a bond, it is suggested that Mr. Allison pay the \$40.00 per month as ordered and without giving any customary bond. However, should he fail to make payment required we may be compelled to revoke his letters and search for a different guardian.'

"Although we understand that a Public Administrator is bonded to the State while other legal guardians are bonded to the Probate Court, we are wondering if the interpretation of the law with regard to Public Administrators might be extended to cover legally appointed guardians, other than Public Administrators.'

"Inasmuch as it is my feeling that formal requests for opinions from your office should come only from the central office of the Division, I have taken the liberty to incorporate the details of Dr. Baur's inquiry into this request.

"As soon as we receive your interpretation and opinion, we will see to it that the Fulton State Hospital is properly informed.

"I am assuming, of course, that you agree with me in this manner of presenting questions of legal interpretation to your office."

We first direct attention to Section 475.100, V.A.M.S. 1949, which aforesaid section was Section 302, p. 385, Laws 1945, and which section reads:

"1. Every guardian of a minor or incompetent, before entering upon the duties of his office, shall execute and file a bond, approved by the court, procured at the expense of the estate with sufficient surety in an amount fixed by the court at not less than double the value of the personal estate and one year's income from the estate except that where a corporate

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surety bond is provided the court may fix the bond in an amount not less than the actual value of the personal property of the estate and one year's income from the estate. Sections 473.157 to 473.217, R.S. Mo, relating to the bonds of executors and administrators, except subsection 1 of section 473.157, RSMo and subsection 1 of section 473.160, RSMo, are applicable to the bonds of guardians.

"2. The probate court may, at any time, require any guardian to give a new bond or additional security, as the circumstances of the case require; and if any order for that purpose is not complied with within the time therein stated the appointment of the guardian may be revoked, and another appointed who will give the bond and security required."

Following the aforesaid section is the "form" of the bond of a guardian. We quote the following portion of this aforesaid bond:

"IN THE PROBATE COURT OF _____ COUNTY,
MISSOURI, AT _____
Estate Number _____

BOND OF GUARDIAN WITH PERSONAL SURETY

In the estate of _____
Incompetent Minor

I, _____, as principal, and _____ as surety, are held and firmly bound to the state of Missouri to and for the use and benefit of _____ incompetent minor, in the sum of _____ Dollars, for the payment of which we bind ourselves, our heirs, executors, administrators and assigns jointly and severally.

The condition of the bond is, that if _____ who has been appointed _____ guardian of the _____ (person and estate) of _____

(person) (estate)
incompetent minor, shall faithfully administer

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said estate, account for, pay and deliver all money and property of said incompetent minor and perform all other things touching such guardianship required by law, or the order or decree of any court having jurisdiction, then the above bond to be void, otherwise to remain in full force. * * * (Emphasis supplied.)

From the above section, it would appear that the bond of the guardian is intended to and does only cover the estate of the incompetent which comes into his hands in his capacity as guardian and to guarantee that such estate will not be lost through his misconduct. We fail to see that there is in such a bond any intimation that it could be construed to in anywise cover or be a substitute for the bond provided for in Section 202.863, RSMo Cum. Supp. 1957, which is the bond given to cover maintenance costs of a person admitted to a state hospital as a private patient.

In your letter to us you refer to our opinion rendered January 22, 1959, to Dr. Alfred K. Baur, Superintendent of State Hospital No. 1. In that opinion, we held that a public administrator who caused to be admitted to a state hospital as a private patient an incompetent who had been committed to his care in his capacity as public administrator need not comply with Section 202.863, supra. The basis for that holding is that the public administrator's bond covers all of the official duties that such public administrator has as a result of his public office, and that he is not personally liable for any payment except that which can be made out of his ward's estate and that he is, therefore, not required to provide the bond provided for in Section 202.863. It is, of course, obvious that the public administrator becomes guardian because of his occupancy of his office, but other guardians, such as the one now under consideration, are appointed by the probate court and can accept or reject such appointment. We feel, therefore, that there is a clear distinction between the situation with respect to a public administrator and a guardian such as is here under consideration.

CONCLUSION

It is the opinion of this department that a bond given by the legally appointed guardian of an incompetent does not make unnecessary the giving of the bond for maintenance at a state

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hospital as a private patient required by Section 202.863,
RSMo Cum. Supp. 1957.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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