GUARDIAN: Guardian not authorized to invest minor ward's
WARDS: funds in life insurance.

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Mr. Carl F. Sapp,
Attorney at Law,
Columbia, Missouri.

Dear Mr. Sapp:

We have your recent request for an opinion from this office. Your letter of request is in part as follows:

> "Judge William J. Ridgeway, Probate Judge of Boone County, has received a petition from the public administrator, asking that the administrator be allowed to purchase a policy of ordinary life insurance on the life of a ward for whom he is guardian and curator. The life insurance is to be payable to the estate of said ward.
>
> "Will you please give me an opinion as to whether the investment of the funds of a minor, by his guardian and curator, in ordinary life insurance is a legally acceptable investment?"

The Supreme Court of this state in the case of In re Farmers' Exchange Bank of Gallatin, Mo. 37 S.W. (2d) 936 ruled as follows, l.c. 941:

> "In approaching this question, we must keep in mind that the plaintiff in this action is not dealing with her own property, but she stands before the court in a representative capacity of guardian and curator for minor children. In this capacity plaintiff has certain duties to perform, by virtue of the mandate of the Missouri statute. Failing in these duties, a guardian is subject to removal by the probate court. Section 418, Rev. St. Mo. 1929 (also 1939) provides in part, 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 settlement. * * * '
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> "It was therefore the duty of plaintiff to invest the funds in question in the manner provided by the section of the statute quoted.
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> "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. * * * "
> (Words in parenthesis ours)

Similarly, in Round Prairie Bank of Fillmore v. Downey 64 S.W. (2d) 701, the Kansas City Court of Appeals stated as follows, l.c. 704:

> "Indeed, there is no authority found in the statute for the investment of a ward's money in a bank certificate of deposit, running for a period of twelve months, as in this case, unless upon the theory that it is a loan; and, if a loan, the proper security should have been exacted. In whatever light viewed, it is not the ordinary and usual deposit; but, in the light of the statute quoted, it is an unauthorized and unlawful investment of the money of the ward and amounts to a misappropriation of the same. By the statute, the guardian and curator is directed to lend the money or invest it in a certain type of bonds, if not

> used in the improvement of the ward's real estate. If the ward's funds are otherwise invested than as provided by statute, it is unlawful. * * * "

More specifically, in 39 C. J. S. 139, 141, we find the following:

> "While a guardian is generally authorized to make any investment which, in his best judgment, arrived at in good faith and after the exercise of due diligence, will secure the principal and yield a reasonable income therefrom, if the character of investments which are permissible is prescribed by statute or constitutional provision, he may lawfully invest only in such securities as the law prescribes. (Citing Mo. cases)
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> "As a general rule, the guardian should not invest the ward's property in trade or speculation, or in obligations in which the guardian has an individual interest. Where the statute does not authorize such an investment, the guardian may not purchase stocks and bonds of private corporations or policies of insurance on the life of the ward, * * *"
> (Underscoring ours)

The above citations make it clear beyond question that ordinary life unsurance would be improper and unlawful as an investment of the funds of a minor ward.

There exists, however, a possible justification for the purchase of ordinary life insurance on the life of a minor ward. That possibility arises under the provisions of Section 402 R.S. Mo. 1939 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."

We are unable to find any Missouri cases wherein the courts have applied said Section 402 to test the purchase of insurance as "maintenance and support," but the following case from New York, which has substantially similar statutes, seems directly in point. In re Vanderbilt's Estate, 223 N.Y.S. 314, the court held as follows, l.c. 316:

> "The application is denied as a matter of law, and not of discretion. I hold that the statutes of this state do not permit the investment of infant's funds in policies of life insurance. In substance and in effect, the issuance of these policies and the payment of the premiums would amount to an investment of the infant's funds. Under our statutes a guardian may invest the funds of an infant's estate only in first mortgages on real estate, with certain limitations, and in bonds which are legal investments for savings banks. Domestic Relations Law, Sec. 85; Decedent Estate Law, Sec. 111, as amended by Laws 1926, c. 307; Banking Laws, Sec. 239. There is no statutory authority for the guardian to invest, or the surrogate to countenance the investment of the funds of the ward in plicies of life insurance.
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> "I hold further that section 194 of the Surrogate's Court Act (Laws 1920, c. 928) does not permit under the guise of an application for the support of a ward, an allowance for the payment of insurance premiums. The word 'support' comprehends 'anything requisite to the housing, feeding, clothing, health, proper recreation, vacation, traveling expense,' or

other proper cognate purposes included within the scope of the word. Jessup-Redfield, Surr. (6th Ed.) 1494."

The Vanderbilt case, supra, was commented upon and approved in the more recent case of Rooney v. Wiener 263 N.Y.S. 222.

Although the Vanderbilt case is not controlling here, we find it persuasive, because the views therein expressed are, in our opinion, entirely consistent with what we understand to be the plain and common meaning of "maintenance and support." Certainly it would be a gross sophistry to deny guardians the authority to invest their wards' funds in ordinary life insurance, only to permit them to evade that rule by allowing them to apply the income, from the authorized investments, to the purchase of life insurance under the guise of "maintenance and support."

CONCLUSION

It is, therefore, the opinion of this office that a guardian or curator can not invest the funds of a minor ward in ordinary life insurance; nor can he apply the income from authorized investments to the purchase of said insurance.

Respectfully submitted,

H. JACKSON DANIEL,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
Attorney General.

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