



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK
ATTORNEY GENERAL

OPINION NO. 85-3
January 3, 1985

Ray Scott, Director
Arkansas Dept. of Human Services
Donaghey Building, Suite 1300
7th & Main
Little Rock, AR 72201

RE: Opinion Request from Child Care Facility Review Board

Dear Mr. Scott:

You have requested an interpretation of Ark. Stat. Ann. §83-902(D), specifically whether guardianship of children granted to a child care facility exempts the facility from board licensure requirements. It does not.

Pursuant to §83-902(D), the only exempting relationships between the child and the facility would be "blood, marriage, or adoption." Guardianship of a minor does not give rise to any of these relationships.

As promulgated in Ark. Stat. Ann. §§57-601 et seq. (Repl. 1971, Cum. Supp. 1983), a guardianship is ordered by a probate court to provide care and custody for an incompetent, in this situation a minor. It does not create a permanent relationship between the guardian and ward and can be dissolved under a variety of circumstances. The parties need not be blood relatives; the guardian is held accountable to the court for his actions as the court retains jurisdiction as long as the guardianship exists; and the guardian may be compensated for his service.

While it is true that the guardian of a minor ward will obviously perform certain parental functions, the legal relationship between the child and his natural parent still exists. Therefore, a guardianship is not a substitute or alternative to adoption because adoption forever terminates the biological parent-child relationship and statutorily creates a parent-child relationship between the child and the adoptive parents. Ark. Stat. Ann. §56-215(a)(1)(2).

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Finally, had it been the intent of the legislature to include guardianship as an exemption to licensure, it would have been a simple matter to include that exemption in §83-902(D).

Therefore, it is the opinion of this office that a child care facility cannot exempt itself from licensure requirements by obtaining guardianship of a child or children it serves.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elizabeth Dowling.

Sincerely,


STEVE CLARK
Attorney General

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