



Guardianship

The Commonwealth of Massachusetts

Office of the Secretary of State
Michael J. Connolly, Secretary

Robin E. Hall
Legal Counsel

April 6, 1992

Stephen L. Richmond, PA-C
Physician Assistant
810 Border Street Apt. 712
East Boston, MA 02128

Dear Mr. Richmond:

Deputy Secretary of State Timothy Gassert referred your letter of February 25 to me for response. I enclose a copy of an article which appeared in the Public Recorder, a newsletter for city and town officials, entitled "Persons Subject to Guardianship That Do Not Specifically Forbid Voting Are Eligible Voters". As you will note, our legal position, in consultation with the state Departments of Mental Health, Mental Retardation, and the Attorney General, is that persons under general guardianships that do not specifically forbid voting are eligible to register and vote.

Therefore, the four individuals under guardianship mentioned in your letter are legally registered to vote unless their guardianships specifically forbid voting.

Please call me if you have any further questions about this issue.

Sincerely,

Robin E. Hall

Robin E. Hall
Legal Counsel
Elections Division

cc: Peter Sacks, Assistant Attorney General
Kim Murdock, Esq. DMR

PERSONS SUBJECT TO GUARDIANSHIPS THAT DO NOT
SPECIFICALLY FORBID VOTING ARE ELIGIBLE VOTERS

As you know, state law makes persons "under guardianship" ineligible to vote in all elections, and persons registering to vote must swear that they are not "under guardianship". (See Mass. Const. amend. art. 3; G. L. ch. 51, §§ 1, 36.) In response to recent questions, the Elections Division in consultation with the state Departments of Mental Health, Mental Retardation, and the Attorney General, has concluded for the following reasons that these words "under guardianship" must be interpreted for voting purposes to refer only to guardianships that contain specific findings prohibiting voting.

In 1975 and 1985 decisions, the state Supreme Judicial Court read these words narrowly, expressing "substantial" doubt about the constitutionality of prohibiting persons from voting because of guardianship without an individual determination of their capacity to vote. These decisions make it clear that persons are "under guardianship" for voting purposes only if the Probate Court has actually appointed a guardian, and furthermore that "limited" guardianships that do not refer to voting also do not prevent voting. [See Boyd v. Board of Registrars of Voters of Belchertown, 368 Mass. 361, 334 N.E.2d 629 (1975); Guardianship of Hurley, 394 Mass. 554, 476 N.E.2d 941 (1985).]

The question that has arisen recently is whether general guardianships that do not specifically forbid voting preclude otherwise eligible citizens from voting. In view of the "substantial" doubts expressed by the Supreme Judicial Court in the above cases, federal court decisions, and the views of respected commentators that prohibiting voting by all persons subject to general guardianships would be unconstitutional, we advise you to interpret the words "under guardianship" for voting purposes to refer only to guardianships that contain specific findings that prohibit voting.

Therefore, persons subject to limited or general guardianships that do not include such specific findings prohibiting voting are eligible to vote, and need not undertake the significant burden of obtaining court modifications of their guardianships explicitly allowing them to vote. Thus, they may truthfully sign the voter registration affidavit containing the statement that they are "not . . . under guardianship" for this purpose. (Of course, in any event, local election officials have no discretion to reject properly signed registration affidavits on this basis at the time of registration.)

If you have questions, please call or write the Elections Division, One Ashburton Place, Room 1705, Boston, MA 02108, telephone (617) 727-2828 or 1-800-462-VOTE.

DISPOSITION OF CENSUS RECORDS - REMINDER FROM LAST JANUARY!

With the beginning of the new year, municipal clerks will once again be conducting the annual census and compiling the street list. Annual municipal census records must be retained for one year or until the street list has been published. Following the expiration of the retention period, annual municipal census records may be disposed of following receipt of the written authorization of the Supervisor of Public Records. For further information regarding census records and other records management matters, please call the Records Management Unit of the Secretary of State's Office at (617) 727-4062.