

April 20, 2012

TO: Les Wagner

FROM: Jane Kruse, J.D.

In response to your request that I research a question recently raised by a MACDDS member regarding the legality of a County Board funding the cost of pursuing guardianship proceedings for a client with county tax funds, I am providing the following opinion.

As is often times the case, this is not a simple issue to address. The reason for the question of the legality of such expenditure is based in the Missouri Constitution. Article VI of the Missouri Constitution addresses issues related to local governments. Section 23 and 25 state that a political subdivision shall not lend its credit or grant public money or property to any private individual, association or corporation, except as provided in the Constitution. The enumerated exceptions include manufacturing, warehousing and industrial development purposes and providing for pensioning and retirement for employees and periodic cost of living increases in such benefits. While it may initially appear that the grant of money from a County Board to a client or family for the purchase of a service is prohibited, this has not been the judicial interpretation of this section of the Constitution

Courts have recognized that the constitutional prohibitions are not violated when money and property are expended or utilized to accomplish a "public purpose", the reason being that the presence of a public purpose makes the people of the state the direct beneficiary of the expenditures. While there may be an incidental private benefit, the public purpose may override the incidental private benefit.

This interpretation requires that a County Board exercise its judgment in determining if the expenditure of funds serves a legitimate public purpose that outweighs the incidental benefit to an individual. There is precedent for the position that the cost of the guardianship proceeding is in the public interest as the Attorney General used to handle such proceedings for the Department of Mental Health; Legal Services has pursued such matters, and the Public Administrator uses public funds to provide services to those in need of a guardian. Expenditure of public funds by these agencies supports the position that there is a public interest in providing a guardian to persons who are unable to care for themselves. Other considerations would be the financial ability of the client/family to pay the expense, whether there are other family members, and the relative importance as compared to other needed services in light of the cost for the individual client as well as the population served in total. An equitable and fair process for determining when such funds are expended is essential if the funds are limited. Certainly the need for the service would need to be well documented in the individualized plan as well as exhaustion of other potential sources of payment.

An added degree of protection for the County Board and the preferred approach would be for the County Board to enter into a cooperative agreement with the Public Administrator's Office for the payment of a fee for the performance of this function by the PA's attorney.