



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS**  
**AUSTIN**

**GERALD C. MANN**  
ATTORNEY GENERAL

Honorable A. J. Lockett  
County Attorney  
Comal County  
New Braunfels, Texas

Dear Sir:

Opinion No. 0-5504

Re: Can a county court, after a person has been adjudged to be feeble minded in the manner provided by law and sent to the Austin State School, appoint a guardian over the estate of such person as being a person of unsound mind?

This will acknowledge receipt of your letter of recent date requesting the opinion of this department on the above stated question.

Article 4102, Revised Civil Statutes, provides as follows:

"The County Court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, and other persons where it is necessary that a guardian be appointed to receive funds or money due such persons from the Federal Government, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind, habitual drunkards, and other persons for whom a guardian is appointed."

Article 4104, Revised Civil Statutes, provides in part as follows:

" . . . .

"3. Idiots, lunatics or insane persons are persons of unsound mind.

Honorable A. J. Lockett, page 2

"4. An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself."

Article 3233, Revised Civil Statutes, provides:

"A feeble minded child, as defined herein, is one of such feeble mental or moral powers as to be unable to profit by the ordinary methods of education as employed in the common schools. A feeble minded adult is one who is unable under ordinary circumstances to protect and support himself as a law abiding citizen because of lack of mental power."

As pointed out in Article 4102, supra, the county court can appoint guardians for three general classes; namely, minors, persons of unsound minds and habitual drunkards. We are assuming that the person so committed to the Austin State School as stated in your question is over twenty-one years of age, for if not, and need be necessary, a guardian could be appointed upon the fact of his minority. Therefore, the query is whether or not a feeble minded person comes within the purview of persons of unsound mind within the meaning of Article 4102, supra. We have found no authority directly in point.

The Legislature has defined persons of unsound mind as idiots, lunatics or insane persons. We do not believe any constructive purpose will be served in setting forth various definitions of these words, as the courts and lexicographers have gone from one extreme to the other in their definitions. By reading the statutes on Guardian and Ward, we are of the opinion that the Legislature has empowered our county courts to appoint guardians over persons who for some lack of mental power are incapable of taking care of themselves. Evidence of this fact is the definition the Legislature has given to habitual drunkards, heretofore quoted, as well as the nature of the other classes over whom guardians may be appointed.

A feeble minded person according to the language of Article 3233, supra, is one who is unable to protect and support himself because of lack of mental power. In other words, such a person is one, who for some mental deficiency, is incapable of taking care of himself, and thus would be one who would need

Honorable A. J. Lockett, page 3

a guardian, if there be any need therefor, to look after his estate. We believe such a person would be classed as one of unsound mind within the meaning of Article 4102, supra.

The mere fact a person has been sent to an eleemosynary institution appears to be no bar to guardianship proceedings. See *Mast v. Grum*, 134 Tex. 105, 132 S. W. (2d) 105.

It is not the intention of this opinion to imply that feeble minded people are in the same mental class as idiots and insane people. We fully recognize the intellectual difference between them as has the Legislature by providing separate proceedings to have a person adjudged as feeble minded. See Articles 3867 to 3871, Revised Civil Statutes.

It is therefore the opinion of this department that your question be answered in the affirmative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 16, 1943

*Fred C. Chandler*

ATTORNEY GENERAL OF TEXAS

By

*Fred C. Chandler*

Fred C. Chandler  
Assistant

By

*Robert O. Koch*

Robert O. Koch

ROK:db

