

OPINION
49-90

August 5, 1949 (OPINION)

INSTITUTIONS

RE: Sterilization

Your letter of August 3, 1949, addressed to Mr. Wallace E. Warner, attorney general, has been received.

In your letter you ask whether or not a guardian, referring specifically to Mr. Walter O. Burke, attorney, Williston, North Dakota, has the right to consent to sterilization on behalf of his ward who is an inmate of your institution.

This question was ruled upon by the then attorney general on July 12, 1947. The question at that time before this office was, what should be done in a case of two minors who were inmates of an institution and the sterilization board was of the opinion that it was a case where these inmates should be sterilized. The parents were dead and they were Indians.

This office held that the superintendent of the institution should apply to the court for the appointment of a guardian and that notice should thereupon be served upon the guardian as well as upon the minors under the provisions of chapter 23-08 of the 1943 Revised Code. You will note that under section 23-0808, the guardian has the right to decide whether or not an appeal should be taken from the order of the board ordering sterilization. If it grants the right to decide whether or not the sterilization should be objected to, it naturally follows that it also grants the right to consent.

Your attention is further called to section 30-1403 of the 1943 Revised Code, relating to the powers of guardians. This section reads as follows:

"GUARDIANS POWER. A guardian appointed by a court has power over the person and property of the ward unless otherwise ordered."

In view of the former opinion from this office, and the wording of the above-named statutes, it is our opinion that a duly appointed guardian can give his consent to sterilization.

WALLACE E. WARNER

Attorney General