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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-201985

**DATE:** December 16, 1981

**MATTER OF:** Kern K. Neiswander

**DIGEST:** Grandchildren who are not under the legal guardianship of an employee of the Department of Defense or of his spouse may not be considered that employee's dependents for the purposes of establishing entitlement to travel and transportation allowances under the Joint Travel Regulations or overseas allowances under the Department of State Standardized Regulations even though those grandchildren reside with the employee at his overseas station. Status of legal guardianship is determined by applicable state law.

The question in this case is whether grandchildren living with a Federal civilian employee stationed overseas may be recognized as the employee's "dependents" for the purpose of establishing entitlement to travel and transportation allowances for them under Volume 2 of the Department of Defense Joint Travel Regulations (2 JTR) and for the purpose of establishing the employee's entitlement to overseas allowances under the Department of State Standardized Regulations. Since we find that the grandchildren are not under the legal guardianship of the employee or his spouse, they cannot be considered dependents under the JTR or Standardized Regulations. Therefore, the employee is not entitled to travel and transportation allowances for them under the JTR nor could they be the basis for certain of the overseas allowances paid the employee under the Standardized Regulations.

The Acting Assistant Secretary of the Army (Manpower and Reserve Affairs) presented the question which was assigned Control No. 81-3 by the Per Diem, Travel and Transportation Allowance Committee, Department of Defense.

Background

A severe automobile accident incapacitated the grandchildren's mother in 1978. As a result she made arrangements for the children to travel from Colorado, where she and her children resided, to Europe in June 1979 to live

with their grandparents, the Army employee, Mr. Kern K. Neiswander, and his wife. The grandchildren's mother executed a document in June 1979 in which she stated she was relinquishing all custody and parental control to the Neiswanders. However, when the Neiswanders applied with this document to the Civilian Personnel Office in Mannheim, Germany, to have the grandchildren listed as their dependents so the grandchildren would be eligible for enrollment in the military school system on a tuition-free basis, they were told by the Civilian Personnel Office that they needed a court order establishing their guardianship. Upon being advised by the Neiswanders to obtain a court order, the grandchildren's mother executed a Special Power of Attorney under the Colorado Revised Statutes (C.R.S.), 1973, § 15-14-104, on July 31, 1979, which delegated most of her parental powers to the Neiswanders until May 31, 1980, or at the revocation of the mother. She sent this Special Power of Attorney to the Neiswanders with an accompanying statement from a Colorado attorney explaining the lack of a court order in these words: "There is no known procedure in the Colorado law to obtain a court order appointing the above grandparents temporary guardians of the above minor children except to proceed on the basis that they are dependent and neglected children."

The Neiswanders did not wish to pursue custody of their grandchildren on the basis that they were dependent and neglected children. They contended that the Special Power of Attorney, which could have been extended as necessary, was all that was required to establish their legal guardianship over the grandchildren in order to qualify them as their "children" for JTR and Standardized Regulations purposes. The Mannheim Civilian Personnel Office disagreed, but referred the question to higher headquarters for resolution, and the question was subsequently referred here.

#### Discussion and Conclusion

The applicable statute, 5 U.S.C. 5724 (1976), provides that under regulations prescribed by the President, an employee and his "immediate family" shall have their travel and transportation expenses paid by the Government when the employee is transferred. The President delegated the issuance of these regulations to the General Services

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Administration, and these regulations are further defined for Department of Army employees in the JTR. There is nothing in the legislative history of 5 U.S.C. 5724 to indicate whether dependent grandchildren were meant to be included within the term "immediate family," but the JTR, following a revision in the Federal Travel Regulations by the General Services Administration now includes within the term "immediate family"; "The term children shall include natural offspring; stepchildren; adopted children; and grandchildren, legal minor wards, or other dependent children who are under legal guardianship of the employee or employee's spouse." 2 JTR, Appendix D.

Pursuant to 5 U.S.C. 5921 et seq. (1976), certain overseas allowances and differentials are provided to an employee stationed overseas for "his family" or "dependents" under regulations prescribed by the President. The President delegated the issuance of the regulations to the Department of State which included them in the Standardized Regulations. There is nothing in the legislative history of the statutes to indicate whether grandchildren were meant to be included within the terms "his family" or "dependents," but the Standardized Regulations, after initially excluding grandchildren, now include within those terms "\* \* \* those under legal guardianship of the employee or the spouse when such children are expected to be under such legal guardianship at least until they reach 21 years of age \* \* \*." Standardized Regulations, sect. 040.

Thus, both the JTR and the Standardized Regulations now allow dependent grandchildren under the "legal guardianship" of an employee or his spouse to be considered family for purposes of establishing entitlement to the provided benefits. In this case the determination of whether legal guardianship has been established is to be made under Colorado law. Therefore, the question to be resolved is whether the Special Power of Attorney executed by the grandchildren's mother under C.R.S. 1973, § 15-14-104, creates legal guardianship.

The Colorado statute authorizes a parent to delegate most, but not all, of his parental powers for a period not exceeding 9 months. Although the grandchildren's mother properly delegated parental powers to the Neiswanders, under that provision, we do not find that the delegation amounted to a creation of legal guardianship under Colorado law.

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Legal guardianship of a child in Colorado means the authority to make major decisions affecting a child, including authority to consent to marriage or adoption. This authority can only be vested by court action or by testamentary appointment upon death of a parent. C.R.S. 1973, §§ 15-14-201 and 19-1-103(16). The Colorado law which authorized the Special Power of Attorney involved in this case specifically prohibits a parent from delegating the power to consent to the child's marriage or adoption and limits the period for which parental authority may be delegated. Therefore, the Neiswanders are not the legal guardians of the grandchildren for payment of travel and overseas allowances under the JTR and the Standardized Regulations.

Although the grandchildren may not be considered the Neiswander's immediate family under the JTR or the Standardized Regulations, they may qualify as dependents or family under other regulations and thus permit certain benefits to accrue. For example, it appears that they would qualify under Department of Defense Instruction 1342.10 dated May 4, 1970, defining eligibility criteria for tuition-free education of minor dependents in overseas areas.

  
Acting Comptroller General  
of the United States