

OPINION NO. 72-087

Syllabus:

1. The provisions of Section 4507.07, Revised Code, apply to temporary instruction permits issued pursuant to Section 4507.05, Revised Code.
2. The application of a minor under 18 years of age for a probationary or restricted driver's license, under Section 4507.07, Revised Code, may be signed by the minor's parent or guardian, or if none, by any other person having custody of the minor, or if none, by any responsible person, i.e., one of contracting age and under no legal disability.
3. As used in Section 4507.07, Revised Code, "guardian" means guardian of the person.
4. As used in Section 4507.07, Revised Code, "custody" refers to any relationship in which a person stands in loco parentis to a minor, whether or not that person has legal custody of the minor.
5. Under Section 4507.07, Revised Code, the "other person having custody of the applicant" is required to be "responsible", i.e., of contracting age and under no legal disability.
6. Under Section 4507.07, Revised Code, if the applicant for a driver's license is a married woman or man, the husband or wife can sign the application provided that such husband or wife is of contracting age and under no legal disability.
7. For purposes of Section 4507.07, Revised Code, the parents of a minor who have abandoned the minor for a period of six years are not considered as having custody of such minor, provided the intent to abandon and actual abandonment are clear.
8. In the case of a minor under 18 years of age who is a ward of the court and subsequently assigned to a welfare agency and placed in a foster home, the foster parents can sign the application for a driver's license under Section 4507.07, Revised Code.
9. In the case of a minor under 18 years of age who has been placed under the control of the Ohio Youth Commission and who is later assigned to a foster home, the foster parents can sign the application for a driver's license under Section 4507.07, Revised Code.
10. Under Section 4507.07, Revised Code, a stepparent may sign the application for a driver's license of a minor under 18 years of age even though the natural parent is alive and might also sign.

To: C. Donald Curry, Registrar, Bureau of Motor Vehicles, Columbus, Ohio
By: William J. Brown, Attorney General, October 4, 1972

I have before me your request for my opinion, which reads as follows:

"Questions have frequently arisen concerning the proper interpretation of the first paragraph of Section 4507.07 of the Ohio Revised Code, which reads as follows:

"The registrar of motor vehicles shall not grant the application of any minor under eighteen for a probationary license or restricted license unless such application is signed by one of his parents, his guardian, or other person having custody of the applicant, or, in the event that there is no parent or guardian, then by a responsible person who is willing to assume the obligation under this section'.

"It is respectfully requested that your formal opinion be given on the following questions:

"1. Does the above portion of Section 4507.07, Revised Code, apply to temporary instruction permits issued pursuant to Section 4507.05, Ohio Revised Code.

"2. This section designates four classes of persons who may sign the application of a minor under eighteen - parent, guardian, 'other person having custody of the applicant', and 'responsible person'. Under what circumstances may each of these classes sign such a minor's application.

"3. Does the term 'guardian' referred to in this section refer to guardian of the person or guardian of the estate of the minor.

"4. What type of custody is contemplated by the phrase 'other person having custody of the applicant'.

"5. Does the 'responsible person' provision apply to the 'other person having custody of the applicant' classification.

"6. In the case of a minor under eighteen who is a married woman, under what circumstances may her husband who is twenty-one (eighteen?) or over sign her application.

"7. In the case of a minor under eighteen who is a married man, under what circumstances may his wife who is twenty-one (eighteen?) or over sign his application.

"8. Are the parents of a minor who have abandoned the minor for a period of at least six years still considered as having custody of such minor.

"9. In the case of a minor under eighteen years of age who is a ward of a court and subsequently assigned to a welfare agency and placed in a foster home, whether, upon proper documentation, the foster parent can sign the application and if not, who would be required as the signer.

"10. Who must sign in the case of a minor under eighteen who has been placed under the control of the Youth Commission and who is later assigned to a foster home.

"11. May a step-father sign for a minor under eighteen if the husband or wife who is the real parent having custody is still living and the minor has not been adopted."

Since my answers will be comprehensible only with frequent reference to the statutes in question, Sections 4507.05 and 4507.07, Revised Code, I quote them in their entirety, as follows:

Section 4507.05

"The registrar of motor vehicles, or the deputy registrar, upon receiving from any person an application for a temporary instruction permit for an operator's or chauffeur's license, may issue such a permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the highways when accompanied by a licensed operator or chauffeur who is actually occupying a seat beside the driver. The registrar of motor vehicles, or the deputy registrar, upon receiving from any person an application for a temporary instruction permit to operate a motorcycle, may issue such a permit entitling the applicant, while having such permit in his immediate possession, to drive a motorcycle under restrictions determined by the registrar of motor vehicles. Such permits shall be issued in the same manner as operators' and chauffeurs' licenses, including the age requirements as provided under section 4507.08 of the Revised Code, upon forms to be furnished by the registrar, except that no photograph of the applicant shall be required on such permit. No such permit shall be granted for a period to exceed six months.

"Any person having in his possession a valid and current operator's or chauffeur's license or motorcycle operator's license or endorsement issued to him by another jurisdiction recognized by this state is exempt from obtaining a temporary instruction permit, but shall submit to the regular examination in obtaining an operator's or chauffeur's license or motorcycle operator's endorsement in this state. The registrar may promulgate and enforce rules governing the use of such instruction permits."

Section 4507.07

"The registrar of motor vehicles shall not grant the application of any minor under eighteen for a probationary license or restricted license unless such application is signed by one of his parents, his guardian, or other person having custody of the applicant, or, in the event that there is no parent or guardian, then by a responsible person who is willing to assume the obligation imposed under this section.

"Any negligence or willful or wanton misconduct of a minor under eighteen when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of such minor, which person

shall be jointly and severally liable with such minor for any damages caused by such negligence or willful or wanton misconduct.

"If a minor deposits, or there is deposited upon his behalf, proof of financial responsibility in respect to the operation of a motor vehicle owned by him, or if he is not the owner of a motor vehicle, then with respect to his operation of any motor vehicle, in the form and in the amounts as required under sections 4509.01 to 4509.78, inclusive, of the Revised Code, then the registrar may accept the application of such minor when signed by a parent, guardian, or other responsible person, and while such proof is maintained, such parent, guardian, or other responsible person is not subject to the liability imposed under the second paragraph of this section.

"Any person who has signed the application of a minor for a license may thereafter surrender to the registrar the license or temporary instruction permit of such minor and request that the same be canceled. Thereupon the registrar shall cancel such license or temporary permit, and the person who signed the application of such minor shall be relieved from liability imposed by this section."

In response to your first question, the first paragraph of Section 4507.07, does apply to temporary instruction permits issued pursuant to Section 4507.05, because the latter Section specifically provides that "* * * [s]uch permits shall be issued in the same manner as operators' and chauffeurs' licenses, * * *." Note that the last paragraph of Section 4507.07 expressly mentions temporary instruction permits.

With respect to your second question, the language of the first paragraph of Section 4507.07 is not wholly consistent. It sets up the four classes of persons mentioned in your question - "parent", "guardian", "other person having custody of the applicant", and "responsible person" - but it also implies that there are only three classes: "parent", "guardian", and "responsible person". However, the language can be construed to avoid self-contradiction, and the resulting interpretation is reasonable, and hence apparently what the legislature intended. This construction is as follows: the parent or guardian is preferred, but if there is no parent or guardian, then any other person having custody of the minor can sign. If no one has custody, then any responsible person can sign.

In response to your third question, the same person is generally appointed as guardian of a minor's person and his estate, and therefore the choice between them is usually unnecessary. See Section 2111.06, Revised Code. But in the remaining cases, Section 4507.07 refers to the guardian of the person, not to the guardian of the estate, because it implies that the guardian must have "custody" which the guardian of the person does and the guardian of the estate does not. There is no reason why the guardian of the minor's estate should be preferred over any other adult without custody of the minor, because Section 4507.07 imposes liability on the guardian, personally, not on the minor's estate. The personal liability of the one who signs the application is clearly expressed by Hartough v. Brint, 101 Ohio App. 350, 353 (1955), as follows:

"It is to be noted that the primary purpose of the second paragraph of Section 4507.07, Revised Code (Section 6296-10, General Code), is to impose liability upon the parent or other person signing the minor's application for a license, for any damages caused by negligence or willful misconduct of such minor while driving a motor vehicle, whether it be owned by the person signing the application or another.
* * *

In response to your fourth question, "custody" naturally includes legal custody awarded by a court under Section 3109.04, Revised Code. But there is no indication that the legislature intended the term to be restricted to court-awarded custody. "Custody" is not defined in this Chapter of the Revised Code. There is no reason why a person with actual custody of a minor would not serve the purpose of Section 4507.07 just as well as one who has obtained a court award of custody. I conclude that "custody" is a general term, meant to cover all those who stand in *loco parentis* to the minor. That term is defined in Opinion No. 7008, Opinions of the Attorney General for 1956, as follows:

"* * * The term 'loco parentis' describes the situation of one who has assumed the obligations of the parental relationship without going through the formalities of legal adoption. See 189 F. (2d), 494; 76 F. Supp., 778, 25 Words and Phrases, 572, as supplemented."

See also Wilson v. Wilson, 14 Ohio App. 2d 148, 154, 43 Ohio Op. 2d 340, 343 (1968).

Although Section 4507.07 implies that a parent who signs an application for a minor should have custody, a divorced parent does not cease to be a parent for purposes of this Section merely because legal custody has been awarded to the other spouse. The divorced parent who has visitation rights retains some elements of custody. See Angel v. Angel, 2 Ohio Op. 2d 136 (1956). Of similar effect is Section 2151.011 (B) (11), Revised Code, which defines "residual parental rights, privileges, and responsibilities" for purposes of Chapter 2151, Revised Code, as follows:

"'Residual parental rights, privileges, and responsibilities' means those rights, privileges, and responsibilities remaining with the natural parent after the transfer of legal custody of the person, including but not necessarily limited to the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support."

The type of custody described in Angel v. Angel, *supra*, and Section 2151.011 (B) (11), is enough to satisfy the requirement of Section 4507.07 that a parent have custody, since there is no indication that the legislature intended to require that the parent who signs the minor's application have either legal custody or the primary right to custody.

With respect to your fifth question, I should first discuss the meaning of "responsible". Black's Law Dictionary (4th ed. 1951), defines "responsible" as follows:

"Liable, legally accountable or answerable.
* * * Able to pay a sum for which he is or may
become liable, or to discharge an obligation which
he may be under."

The first meaning seems to be the one intended in Section 4507.07, because the legislature used the term in connection with a person who would have no legal liability for the negligent acts of the minor otherwise. The legislature could not have intended the secondary meaning, because it did not require either a parent or guardian to prove financial ability in order to sign the application. It seems clear that the legislature did not intend to require any of the people who sign these applications to show financial responsibility. Therefore, a "responsible" person is one who is able to contract to assume liability, that is, a person who is of contracting age and under no legal disability. See Section 3109.01, Revised Code; 11 O. Jur. 2d, Section 14.

Notice that there is also a moral connotation of "responsible" as the word is used in this sense. State ex rel. Greisinger v. Grand Rapids Board of Education, 88 Ohio App. 364, 372-373, 100 N.E. 2d 294, 299 (1949), in construing "responsible organization" defines "responsible" as follows:

"* * * [H]aving a mental or moral capacity for knowing right from wrong, in virtue of which one may be held accountable for his acts, 'capable of rational thought or action,' * * *."

I conclude that "responsible", as used in Section 4507.07, means "able to contract", i.e., one of contracting age and under no legal disability.

Having defined "responsible" for purposes of Section 4507.07, I will answer your fifth question. Clearly, the legislature intended that a person having actual (as opposed to legal) custody of the applicant be responsible in order to sign. This conclusion is not based on the technical wording of the Section which, as I pointed out previously, is somewhat inconsistent, but on the purpose of the statute, which is to provide a source of compensation besides the minor applicant. I can see no reason for excusing the signer from the requirement of responsibility merely because he or she has actual (not legal) custody of the applicant. However, the question should not arise often, because a person having custody is usually responsible for purposes of Section 4507.07. In the rare case where there is no parent or guardian, and the person having actual custody of the applicant is not "responsible", any responsible person can sign the application.

In response to your sixth question, the husband of a minor woman who is under the age of 18 can sign her application if he is responsible, i.e., of contracting age and under no legal disability. Since marriage emancipates a minor, there is no "parent, guardian, or other person having custody of the applicant". Perry v. Perry, 21 Ohio L. Abs. 577 (1936). If the husband is under contracting age he cannot sign because, in general, contracts of infants are voidable at the election of the infant. See 28 O. Jur. 2d, Section 9, and cases cited therein.

In answer to your seventh question, the reasoning and conclusion of my answer to your sixth question also applies to the case where a married man is under the age of 18, so that his wife is able to sign his application only if she is of contracting age.

In response to your eighth question, notice that "custody" is not restricted to legal custody (see my answer to your fourth question). Parents may forfeit custody of their children by conduct as well as contract. Clark v. Bayer, 32 Ohio St. 299 (1877); In re Lehmkuhle, 24 Ohio Op. 181 (1942). In Clark v. Bayer, supra, the parents were held to have forfeited custody after seven months' abandonment; in Lehmkuhle, supra, the elapsed time was two years. Both cases involved express agreements to transfer custody to a third party, which were fully executed. I conclude that six years' abandonment is ample to work a forfeiture of custody. Rather than placing undue emphasis on the time period, I should point out that custody is forfeited after abandonment for any length of time where there is intent to abandon, but the intent to abandon and the actual abandonment must be clear, to come within the rule of these two cases.

In response to your ninth and tenth questions, a foster parent stands in loco parentis of the foster child. In Opinion No. 6451, Opinions of the Attorney General for 1943, my predecessor states in the third branch of the syllabus as follows:

"A 'foster home', as the term is used in the law of Ohio means a family home where the persons maintaining the home rear a child or children of another as their own child or children, and thereby the relationship existing between such persons and the child or children who are being reared, is properly described as being in loco parentis."

Since the real parents have lost custody of a child who is a ward of a court, and who is subsequently assigned to a welfare agency and placed in a foster home, the foster parents can sign his application because they stand in loco parentis.

The same reasoning and conclusion applies in the case of a minor under the age of 18 who is placed in the custody of the Ohio Youth Commission and later assigned to a foster home under the provisions of Section 5139.39, Revised Code. One would imagine that a welfare agency or the Ohio Youth Commission might adopt regulations for the foster parents to follow in these situations; but in the absence of such regulations, foster parents stand in loco parentis to the children assigned to them, and can sign their application for a license.

In response to your eleventh question, a stepparent does stand in loco parentis to his stepchild if he has received the child into his family and treats him as his own child. Wing v. Hibbert, 7 Ohio N.P. 124, 8 Ohio Dec. 65 (1897), reversed as to other points in 20 Ohio C.C.R. 404, 11 Ohio C. Dec. 190 (1899), holds in the fourth branch of its syllabus as follows:

"A step-father is under no obligation to support the child of his wife by a former husband; yet, if he receives the child into his own home, and educates and supports him, discharging to him all the duties of a parent, he would be entitled to claim the earnings of the child, and is liable for the support of such child, and may be bound by his contracts for necessaries."

See also Berkmeyer v. Kellerman, 32 Ohio St. 239, 250 (1877), and Evers v. Gardner, 1 Ohio App. 317 (1913).

Clearly then, a stepparent may create a relationship with his stepchild which has long been recognized in law, and which includes responsibilities and liabilities much more extensive than those involved in our present problem. Because of this relationship, he may sign the application even though the natural parent is alive and might also sign.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The provisions of Section 4507.07, Revised Code, apply to temporary instruction permits issued pursuant to Section 4507.05, Revised Code.

2. The application of a minor under 18 years of age for a probationary or restricted driver's license, under Section 4507.07, Revised Code, may be signed by the minor's parent or guardian, or if none, by any other person having custody of the minor, or if none, by any responsible person, i.e., one of contracting age and under no legal disability.

3. As used in Section 4507.07, Revised Code, "guardian" means guardian of the person.

4. As used in Section 4507.07, Revised Code, "custody" refers to any relationship in which a person stands in loco parentis to a minor, whether or not that person has legal custody of the minor.

5. Under Section 4507.07, Revised Code, the "other person having custody of the applicant" is required to be "responsible", i.e., of contracting age and under no legal disability.

6. Under Section 4507.07, Revised Code, if the applicant for a driver's license is a married woman or man, the husband or wife can sign the application provided that such husband or wife is of contracting age and under no legal disability.

7. For purposes of Section 4507.07, Revised Code, the parents of a minor who have abandoned the minor for a period of six years are not considered as having custody of such minor, provided the intent to abandon and actual abandonment are clear.

8. In the case of a minor under 18 years of age who is a ward of the court and subsequently assigned to a welfare agency and placed in a foster home, the foster parents can sign the application for a driver's license under Section 4507.07, Revised Code.

9. In the case of a minor under 18 years of age who has been placed under the control of the Ohio Youth Commission and who is later assigned to a foster home, the foster parents can sign the application for a driver's license under Section 4507.07, Revised Code.

10. Under Section 4507.07, Revised Code, a stepparent may sign the application for a driver's license of a minor under 18 years of age even though the natural parent is alive and might also sign.