



2008-133

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 15, 2008

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Honorable Luke Cooley
Houston County Judge of Probate
Post Office Drawer 6406
Dothan, Alabama 36302

Age Requirements – Witnesses – Notary
Public – Documents – Probate Judges

Pursuant to section 26-1-1 of the Code
of Alabama, the age of majority for an
unmarried person is 19.

Although there is no specific age that a
person must obtain to become a witness
to a legal document, it is the opinion of
this Office that a person 18 years of age
or older, who appears competent, is of
sufficient age to witness a legal
document.

Dear Judge Cooley:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Is a witness's signature by a person who is
18 years old valid on a legal document?

FACTS AND ANALYSIS

In your letter of request, you seek guidance regarding the age at
which a person may act as a witness to an instrument or document. Your
inquiry arises due to the fact that there are different references throughout
the Code regarding the appropriate age for certain actions. Specifically,
your letter states as follows:

(1) A minimum age of 18 is required to apply and become a notary public in the State of Alabama, based upon bonding requirements that "applicant be a registered voter." To become a registered voter in this state, one must be 18 years of age. Under that determination and pursuant to title 17 (elections) [ALA. CODE §§ 17-11-7, 17-11-10], as amended], the statute requires a voter's registration affidavit to be witnessed by two persons 18 years of age or older, or a notary public, to be valid.

(2) To be self-proving, a last will and testament requires that a statement indicate that the testator/testatrix be 18 years of age or older. ALA. CODE § 43-8-132.

The age of majority is defined as 19 years of age. ALA. CODE § 26-1-1. Nonetheless, there is a laundry list of contradictions as to the interpretation of the "age of majority," which include, but are not limited to, 18 years of age: Juvenile determination for criminal procedures, (ALA. CODE § 15-8-150); the release of custody from the Department of Youth Services (session laws 2008); military service (federal); motor vehicle licenses and registration (ALA. CODE § 32-6-29.9); elections (title 17); professional licenses (title 34); and the execution of a will or to become a notary public (see above).

There are so many contradictions of application or interpretations of the "age of majority," there exists no conclusive legal foundation to which probate officers can point or rely when it pertains to the required legal age of a witness to a legal instrument. Because of this lack of authority, I am asking for an opinion on this specific legal question from your office. What is the required legal age of a witness to any legal instrument or document not otherwise codified or defined by common law?

Your particular inquiry addresses two different issues. Specifically, you ask what particular interpretation should be given with regard to the term "age of majority," and you ask at what age a person may witness a legal document.

Section 26-1-1 of the Code of Alabama specifies the age of majority as follows:

(a) Any person in this state, at the arrival at the age of 19 years, shall be relieved of his disabilities of minority and thereafter shall have the same legal rights and abilities as persons over 21 years of age. No law of this state shall discriminate for or against any person between and including the ages of 19 and 21 years solely on the basis of age.

(b) This section shall also apply to any person who arrived at the age of 19 and 20 years before July 22, 1975, but shall not abrogate any defense or abridge any remedy available to him prior to such date.

(c) All laws or parts of laws which read "under the age of 21 years" hereafter shall read "under the age of 19 years." Wherever the words "under the age of 21 years" appear in any law limiting the legal rights and abilities of persons under such age, such words shall be construed to mean under the age of 19 years.

(d) Notwithstanding the provisions of subsection (c) of this section, nothing in this section shall be deemed to repeal any provision of Chapter 19 of Title 15 of this Code.

ALA. CODE § 26-1-1 (1992). In interpreting statutes, we rely on the plain language of the statute. In this instance, the Legislature determined that a person who is unmarried and has not reached the age of 19 is a minor. The age of majority is the age at which the "disabilities of minority" or "disabilities of nonage" are removed, if a juvenile court of competent jurisdiction has not removed the disability set forth in the statute earlier. As stated in the Observation portion of section 1 of *Infants* in 42 Am. Jur. 2d, "[m]ajority is the age at which the disabilities of infancy are removed,

and hence a person who has reached his majority is entitled to the management of his or her own affairs and to the enjoyment of civic rights." 42 Am. Jur. 2d *Infants* § 1 (2000).

Given the statutory authority found in section 26-1-1, the age of majority in the State of Alabama is generally 19 years of age when the person is unmarried. Other statutes may point to a more specific age in which the disability of nonage is removed for that particular issue. This, however, does not mean that the standard statutory age of majority is no longer applicable for all other purposes. Section 7 of *Infants* in 42 Am. Jur. 2d states as follows:

In the absence of an express constitutional inhibition, the legislature has the power to fix or change the age at which persons reach majority, or at which infants are [sic] deemed competent to perform certain acts or duties, since minority or majority, rather than being a fixed or vested right, is a status which is created by the law and is subject to statutory limitations or exceptions.

Observation: There is no legal requirement that the same age of majority apply to all activities and circumstances, and statutes setting different ages at which a person may engage in an activity or be treated as an adult are within the province of the legislature. Thus, a statute may set different ages of majority for different types of acts.

42 Am. Jur. 2d *Infants* § 7 (2000) (internal citations omitted). Accordingly, the age of majority, pursuant to section 26-1-1 of the Code of Alabama, describes a minor as a person who is unmarried and under the age of 19.

Your next question asks at what age a person may witness a legal document. There is no specific age requirement needed for a person to witness a legal document. Consideration, however, should be given to a person's age and competency, i.e., ability to accurately testify regarding a particular situation. In a courtroom setting, people of all ages are permitted to testify regarding various situations of which they have personal knowledge. *Miller v. State*, 391 So. 2d 1102, 1107 (Ala. Crim. App. 1980) (determining that the trial court did not abuse its discretion in allowing a four-year-old to testify). It is for a judge to determine whether a minor is competent to testify. ALA. CODE § 12-21-165 (2006).

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Langham v. State, 494 So. 2d 910 (Ala. Crim. App. 1986). As noted in your request, a person may become a notary at 18 years of age and, in turn, witness legal documents. If a person has reached the age at which he or she is statutorily authorized or empowered to become a notary, it is the opinion of this Office that that person, if he or she appears competent, should be of substantial years to witness a legal document.

CONCLUSION

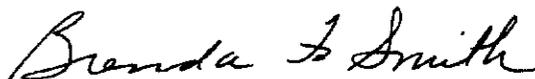
Pursuant to section 26-1-1 of the Code of Alabama, the age of majority for an unmarried person is 19.

Although there is no specific age that a person must obtain to become a witness to a legal document, it is the opinion of this Office that a person 18 years of age or older, who appears competent, is of sufficient age to witness a legal document.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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