

## Opinion No. 50-5321

September 22, 1950

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Murray A. Hintz Director Department of Public Welfare Santa Fe, New Mexico

{\*182} You have requested the opinion of this office as to whether or not the Girls' Welfare Home at Albuquerque and the New Mexico Industrial School at Springer are eligible to receive surplus commodities from the Department of Agriculture, United States Government.

You state that you have been advised that these institutions are ineligible to receive such commodities only if they are to be considered penal institutions under the laws of the State of New Mexico. The two institutions are set up to care for juveniles committed there by the juvenile courts of this state after being adjudged juvenile delinquents or wards of the court. Therefore, if juvenile court proceedings are criminal in their nature, the two institutions would be considered as penal institutions and would be ineligible for aid. Otherwise, it would follow that the institutions would be considered as welfare agencies of the state and should be receiving the surplus commodities distributed for this purpose by the United States Government. Sec. 44-107, 1941 New Mexico Compilation, pocket supplement, provides in part as follows:

"In no case shall any order, judgment or decree adjudging a person to be a juvenile delinquent or a ward of the court be deemed to be a conviction of a crime, nor shall such adjudication operate to impose any civil disability, nor shall any juvenile delinquent be deemed a criminal by reason thereof, for the reason that the entire proceedings and adjudication, if any, are to be had for the rehabilitation and best interest and welfare of the juvenile delinquent, but nothing in this act shall be construed to prevent any person of whatever age from being charged with the commission of a felony under the laws of this state and prosecuted therefor in the district courts of this state, and upon conviction may be sentenced to the state penitentiary in conformity with the criminal laws of this state in the same manner as any person."

The above quoted section is so plain that it needs no interpretation or explanation. These proceedings in juvenile court are strictly for the welfare and best interest of the juvenile and cannot in any manner be considered as penal.

The question of the nature of proceedings in juvenile court was before the Supreme Court of this state in: *In re Santillanes*, 47 N.M. 140, 138 P.2d 503. There it is said:

"Our act specifically provides, if indeed the caution would be required, 'in no case shall an order adjudging a person to be a ward of the juvenile court be deemed to be a conviction of crime'. Sec. 107 of Chapter 44, *supra*. None of the reasons advanced by petitioner, even though most of them might be applicable if this is to be treated as a

criminal proceeding, can apply here. The case of *Wissenberg v. Bradley*, 209 Iowa 813, 229 N.W. 205, 207, 67 A.L.R. 1075, apparently a leading case on the question, deserves to be referred to more fully, {<sup>\*183</sup>} but we quote only briefly from a portion of the opinion, authored by Mr. Justice Faville: 'Statutes of this general character have been characterized by the courts as progressive and humanitarian. \* \* \* Some courts refer to them as paternal and benevolent. \* \* \* Such statutes are **not criminal or penal**. They are not intended as a punishment, but are calculated to save the child from becoming a criminal. \* \* \*' (Emphasis ours)

"\* \* \* these statutes, instead of attempting to punish juvenile offenders for misconduct, criminal or otherwise, try to remove them from the path of temptation, and by preventive and corrective means seek to direct them in the paths of rectitude".

The above quoted construction of Section 44-107 clearly shows that the Supreme Court of the State of New Mexico has flatly decided that juvenile court proceedings are not criminal or penal. The statutes and proceedings under which a juvenile is committed not being criminal, it follows that the institution to which they are committed cannot be considered a penal institution.

It is, therefore, my opinion that the Girls' Welfare Home and the New Mexico Industrial School are not penal institutions and are qualified to receive surplus commodities from the federal government.