

Opinion No. 55-6219

July 8, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Judge Edwin L. Swope, Chairman, Board of Trustees, New Mexico Industrial School, P. O. Box 488, Albuquerque, New Mexico

Replying to your letter of June 28th in which you requested an opinion from this office as to whether the Superintendent of the New Mexico Industrial School can, without any court order, send a boy committed to the custody of the school to the State Hospital at Las Vegas for observation and diagnosis when that boy has, in the opinion of the Superintendent, symptoms of mental illness, please be advised as follows:

We are of the opinion that the New Mexico Statutes make no provision for the Superintendent of the New Mexico Industrial School to send a boy committed to its custody to the State Hospital at Las Vegas for observation and diagnosis without court order. Sections 34-1-1 to 34-2-25, N.M.S.A., 1953, provide for the hospitalization of the mentally ill. There are two ways to secure such hospitalization. Section 34-2-2 provides that any one over 16 may apply voluntarily for such treatment, and if any person is under the age of 16, the parent or legal guardian may apply in his behalf for voluntary treatment. Section 34-2-5 provides the way for involuntary commitment by court order after hearing.

It is our opinion that one of these two methods would have to be used in order to commit a boy to the State Hospital at Las Vegas for observation and diagnosis.

We call your attention to the fact that if at the time the boy is committed to the New Mexico Industrial School, the court committing the boy makes the boy the ward of the court and relieves the parents of their responsibility as legal guardian for such child, that in all possibility it would be possible for the court committing the boy, upon the recommendation of your school, to issue an order sending the boy to the State Hospital at Las Vegas for the purposes of observation and diagnosis.

We call your attention to Section 39, Chapter 205, Laws of 1955, Juvenile Code, which indicates that under Court Order medical, psychological or psychiatric treatment can be given a juvenile.

It is our further opinion that commitment could be made to the State Hospital at Las Vegas, by following the procedure outlined in § 34-2-5, for hospitalization under a court order.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General