

## Opinion No. 55-6314

November 7, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Dr. C. G. Stillinger, Superintendent, New Mexico State Hospital, Las Vegas, New Mexico

We have your letter of October 15, 1955, in which you request an opinion upon the following questions:

1. Is the Superintendent of the New Mexico State Hospital required to accept a commitment of a juvenile under a juvenile court order committing said juvenile to the New Mexico State Hospital, "Until attainment of the age of twenty-one years, or until further order of the court," absent the usual statutory proceedings for insanity commitments governing adult patients?
2. What is the authority of the Hospital in discharging such patients if, in the opinion of the medical staff, the person is neither mentally ill, or has received the maximum benefit from hospitalization?
3. In instances where children under the age of sixteen are sent to this Hospital from the Girls' Welfare Home or the Boys' Industrial School for the purpose of observation or treatment, does the original jurisdiction rest with the first institution, or is it automatically transferred to the New Mexico State Hospital?

We shall answer these questions in the order asked.

1. The power to commit juveniles is found in Section 35, Chapter 205, Laws 1955, which reads as follows:

"When any juvenile has been found to be within the provisions of this Code, the Judge may issue an order to commit such juvenile:

- (a) To the care and custody of his parents or to a reputable citizen of good moral character, subject to such conditions as the Juvenile Court may impose;
- (b) To any suitable institution, association, public or private agency or school willing to receive such juvenile subject to such conditions as the Juvenile Court may impose.
- (c) In the event the juvenile is a boy, to the New Mexico Industrial School for Boys, until twenty-one years of age, unless sooner discharged by the order of the Juvenile Court:
- (d) In the event the juvenile is a girl, to the Girls' Welfare Home, until twenty-one years of age, unless sooner discharged by the order of the Juvenile Court;

(e) Or take such other action as the Court deems necessary in the best interest of the child."

The only possible authority in the Juvenile Code for the Juvenile Court committing a juvenile to the New Mexico State Hospital is found in subsection (b) of Section 35, Chapter 205, Laws 1955. Clearly, it appears that this could only be done under this subsection after receiving evidence of your willingness to receive such juvenile. Here we have assumed that the Juvenile Court has found reason to believe that there is need for your type of treatment.

It is the opinion of this office that Section 34-2-5, N.M.S.A. 1953, provides the exclusive method by which a person can be committed to the New Mexico State Hospital on an involuntary basis. If this procedure is followed, your institution is required to receive the person so committed. See 44 C.J.S. (Insane Persons) Section 67, page 163. Actually the law authorizing commitments to the New Mexico State Hospital merely provides two methods for commitments. It does, however, seem that subsection (b) Section 35, Chapter 205, Laws 1955, would include under "any suitable institution" the New Mexico Hospital.

In answer to your first question, we are of the opinion that (1) your institution must be "willing to receive" a juvenile under the terms set by the Juvenile Court before the Juvenile Court can commit a juvenile to the New Mexico State Hospital.

2. The discharge of a patient admitted from the Juvenile Court under the provisions above outlined would, of course, depend upon the conditions imposed by the Juvenile Court order committing the patient. Since your institution would have to agree to the acceptance of a patient from the Juvenile Court, you could state in the acceptance the desired authority over discharge of such patient. In view of the provisions contained in Section 34-2-3, N.M.S.A., 1953, pertaining to the discharge of voluntary patients and Section 34-2-10 pertaining to the discharge of involuntary patients, it seems clear that the intent of the legislature was that the head of the hospital was to have control as to when patients were to be discharged. It would be our opinion that the superintendent of the New Mexico State Hospital should retain the authority over the discharge of such patient committed from the Juvenile Court.

In any case, however, such a commitment would only be valid until the patient was twenty-one, inasmuch as the Juvenile Court ceases to have any jurisdiction over a party when he reaches this age. If treatment would be required past that age, certainly it would be necessary to have a hearing as provided for by Section 34-2-5, N.M.S.A., 1953, or a voluntary commitment under Section 34-2-2, N.M.S.A., 1953.

3. We are unable to find any statute which would authorize the Girls' Welfare Home or the Boys' Industrial School to transfer children under the age of sixteen to the New Mexico State Hospital for observation or treatment. Assuming that when a commitment has been made to either of these institutions that the Juvenile Court made such juvenile a ward of the Court, it would be our opinion that this Court as legal guardian of such

juvenile would have to apply for a voluntary commitment under the provisions of Section 34-2-2, N.M.S.A., 1953. In this case, the provisions of Section 34-2-4, N.M.S.A., 1953, would apply and the head of the hospital would control the release of the patient. The release of the patient would have to be to the Juvenile Court as guardian for what future disposition the Court might make.

The Girls' Welfare Home or the Boys' Industrial School could apply for an involuntary commitment under the provisions of Section 34-2-5, N.M.S.A., 1953, in which case the release provisions of Section 32-2-10, N.M.S.A., 1953 would apply. In case the Juvenile Court originally committing the juveniles to either the Girls' Welfare Home or the Boys' Industrial School should reconsider the case and under the Juvenile Code, Chapter 205, Laws 1955, commit the juvenile to your institution upon your acceptance, the control for releasing would be as outlined above under the answer to Question No. 2.

By Paul L. Billhymer

Assistant Attorney General