

## Opinion No. 59-52

May 21, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** Mr. Glenn B. Neumeyer Assistant District Attorney Third Judicial District Las Cruces, New Mexico

The Juvenile Code does not authorize the apprehension and holding of juveniles unless a state law is violated or the juvenile is charged with habitual conduct specifically prohibited.

### OPINION

{\*80} This is written in reply to your recent request for an opinion on the following question:

Does the juvenile code provide authority for holding out-of-state, run-away juveniles in custody?

It is my opinion that juveniles who are merely found within a county in which a particular juvenile court has jurisdiction but who are not otherwise within the provisions of the code, may not be held. For a child under eighteen years of age to be within the provisions of the juvenile code so as to permit him to be taken into custody and lawfully held, requires that the juvenile shall have fallen into one of the following situations:

1. violated a law of the state or ordinance or regulation of a political subdivision of the state;
2. has by habitual disobedience of parental or other authority become habitually disobedient, wayward or uncontrollable;
3. is habitually truant from home or school;
4. habitually deports himself in a manner to injure or endanger the morals, health or welfare of himself or others.

It is made apparent by your letter and the attached correspondence that the Dona Ana County juvenile authorities are confronted with a practical problem arising from the increasing number of non-resident juveniles being picked up and held for violations which would, if committed by an adult, constitute vagrancy. You question the validity of such charges and the authority to hold these minors when, as a matter of fact, there are no records available nor personal knowledge had by any of the local officials as to the **habitual** conduct of the minors.

Considering first the jurisdiction of the juvenile courts as provided, Section 13-8-26 N.M.S.A., 1953 Compilation (Pocket Supplement) as amended by Section 2, Chapter 361, Emergency Laws enacted by the Twenty-fourth Legislature (1959) establishes that:

"The juvenile court shall have exclusive original jurisdiction in proceedings:

A. Concerning any juvenile under the age of eighteen years living or found within the county:

(1) who has violated any law of the state, or any ordinance or regulation of a political subdivision thereof; \* \* \*; or

\* \* \*

(2) who by reason of habitually refusing to obey the reasonable and lawful commands or directions of his or her parent, parents, guardian, custodian, teacher, or any person or lawful authority, is deemed to be habitually uncontrolled, habitually disobedient or habitually wayward; or

(3) who is habitually truant from school or home; or

(4) who habitually departs himself as to injure or endanger the morals, health, or welfare of himself or others.

B. \* \* \*."

As to violations of law, no real problem exists since the detaining charge will be sustained or fail upon the presentment of the evidence available. In the latter case of habitual conduct, however, it is a practical impossibility for an apprehending officer to truthfully allege habitual conduct in the case of a run-away, except of course, where the juvenile's past record is {\*81} in fact, known and can be presented.

It might be argued that under subsection 13-8-26 A. (3), that the fact that juvenile is a non-resident or transient establishes a presumption of habitual truancy from school or home. Since the disposition and penalties provided by the Juvenile Code are, however, restrictions on ones personal liberty and therefor criminal in nature, no such presumption may be employed.

It has been suggested that the language used in Section 13-3-42 N.M.S.A. 1953 Compilation, (Chapter 361, New Mexico Session Laws 1959:

"When any juvenile found violating any law or ordinance, **or whose surroundings are such as to endanger his welfare**, is taken into custody, such taking into custody shall not be termed an arrest. The jurisdiction of the court shall attach from the time of such taking into custody.

\* \* \*." (Emphasis ours).

may broaden or extend the jurisdiction of the Court.

While this language establishes the point in time of the Court's jurisdiction, it does not, in my opinion, extend nor expand the jurisdiction of the juvenile court as is otherwise set out by Section 13-8-26 of this same Act.

Accordingly, it is my opinion that the Juvenile Code does not authorize the apprehension or holding of a juvenile regardless of residence status unless the juvenile is charged with a violation of law or of the type of habitual conduct specifically provided to bring him within the jurisdiction of the juvenile court.

Hilton A. Dickson, Jr.

Assistant Attorney General