

Opinion No. 60-121

June 21, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Frank A. Brookshier Superintendent New Mexico Boys' School Springer, New Mexico

QUESTION

QUESTION

Is it legal for the Board of Trustees of the New Mexico Boys' School to hold or seize money in any of the boys' accounts for damage to property caused by any of them?

CONCLUSION

No.

OPINION

{*496} ANALYSIS

You state that you have incidents where a boy committed to the Boys' School destroys school property. You claim that it is only right for him to pay for damage to same because of his willful acts. You state that this principle should also apply to destruction of property by escapee from the school.

In 1959 the Legislature passed Chapter 237, New Mexico Session Laws of 1959, now compiled as § 22-21-1 and 2, N.M.S.A., 1953 Compilation (P.S.), which statute authorizes recovery of civil damages from parents for the malicious or willful damage or destruction of property by minors living with such parents. This is the only statute authorizing suits against minors. However, our opinion is that this statute does not apply since suits under the statute can be made only when the child is living with the parent.

Therefore, we must turn to the common law to determine the liability of a child in such an instance. Section 90 of Volume 27 Am. Jur., at page 812, states:

"If property has been destroyed or other loss occasioned by a wrongful act, it is just that the loss should fall upon the estate of the wrongdoer rather than on that of a guiltless person, and that without reference to the question of moral guilt. Consequently, for every tortious act of violence or other pure tort, the infant tort-feasor is liable in a civil action to the injured person in the same manner and to the same extent as an adult."

Therefore the only legal way that the money of any boy in your institution can be taken or seized for damages to property caused by him is to institute a civil action, obtain a judgment and then levy execution on any money held by the institution. You cannot seize such property without obtaining such a judgment.

By: Hilario Rubio

Assistant Attorney General