

Opinion No. 60-166

September 21, 1960

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

TO: William H. Fisher, Superintendent Las Vegas City Schools The Armory Building Las Vegas, New Mexico

QUESTION

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1. Do officers of the police, sheriff's department or juvenile court have authority to take children into custody while they are on school grounds for the purpose of questioning?
2. What are the rights and responsibilities of the children, their parents, the police and the school authorities in this regard?

CONCLUSIONS

1. Yes.
2. See analysis.

OPINION

{*555} ANALYSIS

The questions herein considered must be examined in light of Chapter 13, Article 8 of the New Mexico Statutes Annotated, 1953 Compilation and its pocket supplement. This portion of the statutes deals with delinquent children. It will be noted that rather broad powers are granted to the juvenile courts and their ancillary enforcement agencies by the New Mexico Statutes. The reasons for treating juveniles differently than criminal offenders has been best expressed by the New Mexico Supreme Court in the case of **In re Santillanes**, 47 N.M. 140, 138 P. 2d 503. I quote from page 154 of the New Mexico Reports.

"The courts, quite uniformly, in distinguishing such proceedings (under the juvenile delinquency laws) from ordinary criminal prosecutions, bottom their decisions as to the constitutionality of such acts upon the premise that the state is thus exercising an inherent power as parents patriae to interfere on behalf of the child, including such interference between them and their parents, when the morals, safety or interests of the children require it." (Citations omitted.)

The juvenile court is not a criminal court. It is intended by law to act in the behalf of juveniles as a parent or guardian. The juvenile is not intended to be a "defendant" in the usual sense of the term, when he is before the court. It is for these reasons that some of the safeguards guaranteed to an adult criminal accused are not available to a juvenile.

Another reason for our conclusion that question number one should be answered in the affirmative is that the taking into custody of juveniles is clearly contemplated by the statutes. Section 13-8-42, {*556} N.M.S.A., 1953 Comp. (P.S.), provides as follows:

"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. When a juvenile is taken into custody, his parent, guardian or custodian shall be notified at the earliest possible time. Whenever advisable, such juvenile shall be released to the custody of his parent or other responsible adult who shall bring the juvenile to the court or probation office at a stated time or at such time as the juvenile attorney, probation officer or court may direct. If such person shall fail to produce the juvenile as agreed, the court may take appropriate action.

Any officer detaining a juvenile shall immediately notify the probation officer or juvenile attorney, and shall file a written report of the arrest and his actions, with the probation officer or juvenile attorney."

Special emphasis should be placed upon the fact that the taking into custody of a juvenile is not to be termed an arrest.

Therefore, the taking into custody of a juvenile would not have attached to it the usual stigma associated with an arrest. The use of normal investigative process is as necessary to the police when dealing with certain juvenile offenders as it is when they are seeking to apprehend adults who have violated the law. The police always have an obligation to enforce the laws of the state and its political subdivisions and to protect the lives and property of the citizens. Since, pursuant to the juvenile delinquent statutes, juveniles will not normally be tried as criminals, they are placed in less jeopardy by reasonable police questioning than are adults. It is interesting to note that even as regards adults, who are subject to criminal prosecution in which self-incriminatory statements could be used against them, police questioning does not constitute a violation of due process. Corpus Juris Secundum has the following to say on this matter in Volume 16 A, Constitutional Law, Section 584:

"The mere questioning of a suspect in the custody of officers is not, however, a denial of due process, (citations omitted) and the fact that for several days while being questioned the accused was held incommunicado does not amount to a denial of due process." (Citations omitted.)

Furthermore, additional protection is afforded the juvenile which is not granted the adult offender. You will recall that the above mentioned Section 13-8-42 declares that, "the

jurisdiction of the court shall attach from the time of such taking into custody." The purpose of the provision is to authorize the court by general regulation, and in individual cases, to supervise police detention of juveniles. An example of this type of regulation and supervision is the enforcement of limited periods of permissible detention which have been imposed by several of the juvenile courts.

In closing our discussion of this question, it should be remembered that the protection of children, which is the guiding principle of the juvenile acts, requires that police have broader powers to take juveniles into custody than to arrest adults. A good treatment of this aspect of the question is found in Monrad G. Paulsen, "Fairness to the Juvenile Offender," 41 Minn. L. Rev. 547 (1956-57), a portion of which follows:

"A policeman should be able to detain a child if he has reasonable grounds to believe that the child is delinquent {⁵⁵⁷} . . . If a policeman without a warrant is powerless unless he finds the child violating a law, the restriction is unrealistic. He may possess information short of personal knowledge of a law violation (indeed the knowledge may be [of] an act not illegal according to the criminal law at all) which strongly supports a belief that a child is delinquent. In such cases, for the benefit of the child, an officer should be able to act. If the youngster, after being taken into custody, is treated in accordance with the provisions of the Juvenile Court Acts, his rights are adequately protected."

Turning to question number two, we will attempt to discuss as specifically as possible your further questions as to the rights and responsibilities of juveniles, officers, parents and school authorities in certain particulars.

While there appears to be no doubt that juveniles may be taken into custody for the purpose of questioning, care must be exercised as to what is done with them after the taking of custody, particularly in view of the provision of our law that a juvenile is not to be unduly detained in a prison or jail. § 13-8-44, N.M.S.A., 1953 Comp. (P.S.). Furthermore, in most cases, the juvenile should be released to the custody of his parent or other responsible adult until his case is to be disposed of. § 13-8-42, N.M.S.A., 1953 Comp. (P.S.). At any rate, no juvenile can be held in detention longer than forty-eight hours except upon order of the court. § 13-8-43, N.M.S.A., 1953 Comp. (P.S.).

As has been previously noted, any officer detaining a juvenile is required to immediately notify the probation officer or juvenile attorney. In addition, police handling of juveniles is within the scope of supervisory control by the juvenile court. The statutes do not require that parents be notified before their child is taken into custody. However, the above quoted § 13-8-42 declares that "when a juvenile is taken into custody, his parent, guardian or custodian shall be notified at the earliest possible time."

We do not find in the Juvenile Code or in any general law any provision which would authorize school officials to deny law enforcement officers the right to enter school premises for the purpose of apprehending juveniles. It is the apparent intent of the law that school officials and law enforcement officers should cooperate fully in dealing with

problems of juvenile delinquency in the best interest of the children involved and of society. There is nothing in the law which requires school officials to deliver students to the police station or the court house for questioning. However, if the school officials feel that it is desirable in the interest of preventing embarrassment to a student and if the student has no objection, there would be no objection as a matter of law to such an arrangement. If school authorities do not favor such a plan they would be justified in releasing students from class to accompany officers upon notification by the police or district attorney of the necessity of questioning. The statutes governing the duties of teachers, county boards of education, county school superintendents and the State Board of Education do not impose the obligation or grant the power to prevent the taking into custody of juveniles while upon school premises.

By: F. Harlan Flint

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