

Opinion No. 62-32

February 9, 1962

BY: OPINION OF, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Honorable Walter R. Kegel, District Attorney, First Judicial District, Santa Fe, New Mexico

QUESTION

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Is a police officer legally authorized to pick up a juvenile at the verbal request of the probation officer where there is no process of any type?

CONCLUSION

No.

OPINION

ANALYSIS

The procedure by which a juvenile is taken into custody is rather elaborately spelled out in Sec. 13-8-30, et seq., N.M.S.A., 1953 Comp. (PS). It is clear that under the circumstances outlined in Sec. 13-8-34, the juvenile judge may either cite a juvenile into court or may order, in writing, that the juvenile be taken into custody immediately, prior to a court hearing.

It could be strongly argued that the procedural steps found in the aforementioned sections are exclusive, and that a juvenile may not be picked up or detained without some person first having caused to be filed a petition alleging the facts causing the juvenile to come within the purview of the juvenile code, and then only upon order of the court.

The question arises, though, as to the meaning of Sec. 13-8-42, which reads:

"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 as 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 officer 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."

In our opinion, this language, standing alone, is somewhat vague and ambiguous. Assuming, however, for purposes of your question, that the section cited gives an officer authority to apprehend and take into custody a juvenile without a warrant or order signed by the judge, still it would apply only to those instances where the juvenile is found breaking a law or ordinance or where his surroundings endanger his welfare. It is interesting to note that being in surroundings which endanger his welfare does not, by provisions of the Juvenile Delinquency Act, make the juvenile a delinquent.

We are aware that the State is considered to occupy the position of **parens patriae** with inherent powers of control over minors. Such powers, however, must be exercised in accordance with the directions of the legislature. While actions of the type raised in your question might be convenient insofar as the probation officer or police officer are concerned, such activities are not blessed with any legal sanction.

Without a warrant signed by the juvenile judge, without the juvenile having violated a law or ordinance in the officer's presence, and without the officer being personally aware of any endangering of the juvenile's welfare because of his surroundings (assuming this latter circumstance constitutes delinquency) the officer cannot be said to have any legal grounds for the apprehension of the juvenile.