

## **Opinion No. 66-123**

November 15, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

**TO:** Glenn J. Walker, Superintendent, New Mexico Boys' School, P. O. Box 38, Springer, New Mexico

### **QUESTION**

#### **FACTS**

A boy was committed to the Boys' School at Springer, New Mexico, by a juvenile court. The boy was placed in the School's forestry camp at Fort Stanton, New Mexico, where he was involved in the forestry program. While at Fort Stanton, he developed abdominal pains which a local physician diagnosed as appendicitis. Because of the urgency of the situation, the medical recommendation was against moving the boy to a hospital where he could be operated on by his family's personal physician. So upon the advice of the local physician, emergency surgery for appendicitis was performed in Ruidoso, near the forestry camp. The boy's parents were notified of all these happenings. Following his release from the hospital after surgery, the boy was released to his parents. This release to his parents was made by court order terminating the custody of the Boys' School. The order of release followed after the Boys' School recommended to the Court that such a release would be best in the situation since the forestry camp staff was unable to properly supervise the boy during his convalescing period and also because of the boy's inability to participate in the forestry camp program during that same period. After the release of the boy by the order of the juvenile court, the boy developed an infection in the incision made during the operation. The parents returned the boy to the hospital in Ruidoso for treatment of that infection. The boy's parents now insist that the State must assume responsibility for the expense of the second hospitalization of the boy necessitated in order to cure the infected incision.

#### **QUESTION**

Is the Boys' School liable for the expense of the second hospitalization undertaken to cure the boy's infected incision?

#### **CONCLUSION**

No.

### **OPINION**

{\*165} ANALYSIS

The Boys' School at Springer acted properly in the emergency situation to provide medical attention for the boy who had been placed in its custody and control by the juvenile court. Although a conflict in the authorities does exist, it has been held that in the absence of statutory authority, the medical expense for treating prisoners is a proper expense {\*166} of imprisonment, **Department of Welfare v. Brock**, 306 Ky. 343, 206 SW 2d 915 (1947). There is more and stronger authority for the proposition that correctional institutions should provide medical services for the inmates in the event of emergency medical situations, **Spicer v. Williamson**, 191 N.C. 487, 132 SE 291, 44 ALR 1280 (1926); **Lamar v. Commissioners of Pike County**, 4 Ind. App. 191, 30 NE 912 (1891).

Since the School lawfully undertook to properly care for the boy and give him medical treatment, it follows that the Boys' School normally would also be liable to give medical attention and treatment to the boy during the period of recovery from the curative procedure effected upon the boy. However, in this instance, we are presented with an intervening controlling agent in the form of the boy's parents. The boy's parents, by order of the juvenile court, became the guardians to whom custody and care of the boy was entrusted during the period of the boy's recuperation. The effect of this transfer of custody from the New Mexico Boys' School to the parents of the stricken boy is of critical importance in determining who is liable for the medical expense incurred in curing the infected incision of the appendicitis operation.

By provision of the Juvenile Code, Section 13-8-29, N.M.S.A., 1953 Compilation (1965 P.S.), the Juvenile Court which has once obtained jurisdiction over a juvenile retains jurisdiction for the purposes of the Juvenile Code until that juvenile becomes twenty-one (21) years of age or until discharged prior thereto by the Court. We also find that under Section 13-8-53, N.M.S.A., 1953 Compilation (1965 P.S.), the Juvenile Court may issue an order to, among other things, commit a juvenile

"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;

In the event the juvenile is a boy, to the New Mexico Boys' School until twenty-one (21) years of age, unless sooner paroled or released by the order of the juvenile court in accordance with the provisions of this act;

Take such other action as the court deems necessary in the best interest of the child."

Therefore, when the juvenile court released the boy from the custody of the Boys' School and ordered that the boy be placed in the care and custody of his parents, the legal effect was to release the Boys' School from further liability for the care and custody and medical expenses which might have been necessary during that boy's recuperative period. It follows that the parents of the boy are the ones who are liable for the medical expense incurred in the curative procedure necessary for treatment of the infected incision.