

## Opinion No. 69-45

May 16, 1969

**BY:** OPINION OF JAMES A. MALONEY, Attorney General Gary O'Dowd, Deputy Attorney General

**TO:** Honorable David F. Cargo, Governor of New Mexico, Legislative Executive Building, Santa Fe, New Mexico

### QUESTIONS

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Was the Committee on Children and Youth, Sections 13-11-1 through 13-11-8, N.M.S.A., 1953 Compilation, abolished by the first session of the twenty-ninth legislature?

#### CONCLUSION

No.

### OPINION

#### {\*68} ANALYSIS

The Committee on Children and Youth was created in 1967 by the enactment of Sections 13-11-1 through 13-11-8, N.M.S.A., 1953 Compilation. This committee was given broad powers to make studies and recommendations in all areas affecting children and youth. Nothing in this 1967 enactment of the legislature indicates any intention that this committee was created to study correctional problems of children and youth although such a study would certainly be proper unless the powers granted to this committee. In 1969 this Committee was given an unconditional appropriation of \$ 9,500.00 to carry out its work. See Section 3, Chapter 282, Laws of 1969.

Prior to appropriating \$ 9,500.00 to the Committee on Children and Youth, the legislature enacted Chapter 226, Laws of 1969 which has a title providing in part as follows:

"CREATING A STATE DEPARTMENT OF CORRECTIONS; DEFINING ITS POWERS, DUTIES AND FUNCTIONS; TRANSFERRING DUTIES, FUNCTIONS, POWERS, RECORDS, PERSONNEL, FUNDS AND EQUIPMENT; AMENDING SECTIONS 13-8-29, 13-8-52, 13-8-53, 13-8-62, 13-8-72, 13-8-73, 42-4-1 AND 42-5-5 NMSA 1953 (BEING LAWS 1955, CHAPTER 205, SECTIONS 11, 34, 35, 44, 54 AND 56, LAWS 1927, CHAPTER 114, SECTION 1 AND LAWS 1931, CHAPTER 36, SECTION 2, AS AMENDED); AND **REPEALING SECTIONS 13-11-1 THROUGH 13-11-8**, 16-6-10

THROUGH 16-6-17, 41-17-15 THROUGH 41-17-17, 41-17-19, 41-17-20, 42-1-1, 42-1-6 THROUGH 42-1-10, 42-1-24.1, 42-1-26.1 THROUGH 42-1-30, 42-1-31.1, 42-1-32, 42-1-33, 42-1-39, 42-1-40, 42-1-45, 42-4-2.1 THROUGH 42-4-2.3, 42-5-1 AND 42-7-3 NMSA 1953 (BEING LAWS 1967, CHAPTER 235, SECTIONS 1 THROUGH 8, . . . ."

Section 20 of Chapter 226, Laws of 1969 purports to repeal Sections 13-11-1 through 13-11-8, supra.

The purpose of this 1969 enactment is to create a unified Department of Corrections to administer all laws and exercise all functions now administered and exercised by the State Penitentiary, the State Board of Probation and Parole, the Combined Board of Juvenile Institutions and the Juvenile Probation Board of Juvenile Institutions and the Juvenile Probation Services Division of the Administrative Office of the Courts. Nothing in this act indicates an intention that the functions exercised by the Committee on Children and Youth are to be placed under the Department of Corrections. On July 1, 1969 all records, property, equipment and unencumbered and unexpended funds belonging to the above named state agencies and department will be transferred to the Department of Corrections. See Section 10 C, Chapter 226, Laws of 1969. We find nothing to indicate an intention to transfer the appropriation of the Committee on Children and Youth to this Department. In fact the Committee on Children and Youth is not mentioned one time in Chapter 226, Laws of 1969.

With the above facts in mind, we are asked if the 1969 legislature abolished the Committee on Children and Youth. This question raises a title problem in Chapter 226, Laws of 1969. Article IV, Section 16 of the New Mexico Constitution requires that:

"The subject of every bill be clearly expressed in its title, . . . If any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void."

{\*69} The purpose of this provision of our constitution was set forth in **State v. Ingalls**, 18 N.M. 211, 218, 135 Pac. 1177 (1913) as follows:

**"First**, to prevent hodge-podge or 'log rolling' legislation; **second**, to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles give no intimation, and which might therefore be over-looked and carelessly and unintentionally adopted; and

**third**, to fairly apprise the people of the subjects of legislation in order that they may have opportunity of being heard thereon."

The title of Chapter 226, Laws of 1969, insofar as this act attempts to abolish the Committee on Children and Youth, obviously fails to satisfy the second and third reasons for Article IV, Section 16 of the New Mexico Constitution as set forth in **State v. Ingalls**, supra. The legislature was not sufficiently apprised of its repeal provisions or they would not have appropriated money to the Committee on Children and Youth after

already having abolished this Committee. At least it presumably would have transferred the appropriation of this Committee to the Department of Corrections or made the appropriation to this Committee contingent on the failure to enact Chapter 226, Laws of 1969.

It is the opinion of this office that before a law, unrelated to the subject of a bill may be repealed, the title must clearly express this intention. In the present case, it would have been necessary for the title of Chapter 226, Laws of 1969 to contain language indicating that it was "abolishing the Committee on Children and Youth" before the requirements of Article IV, Section 16 of the New Mexico Constitution could have been met.

From the foregoing it is concluded that the attempt to repeal the laws creating the Committee on Children and Youth must be considered as a violation of Article IV, Section 24 of the New Mexico Constitution. The provisions of Chapter 226, supra, repealing Sections 13-11-1 through 13-11-8, supra, is void and the Committee on Children and Youth may continue to function pursuant to Sections 13-11-1 through 13-11-8, supra.