

Opinion No. 70-71

August 5, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Howard Leach Secretary of Corrections Department of Corrections P.O. Box 2325 Santa Fe, New Mexico 87501

QUESTIONS

QUESTION

Can the juvenile court order the Department of Corrections to collect restitution, for private damages caused by a juvenile in the commission of an unlawful act, from a juvenile committed to one of its training schools?

CONCLUSION

See Analysis.

OPINION

{*119} ANALYSIS

We presume that you are referring to the New Mexico boys' school or girls' welfare home when you use the term "training schools."

Section 13-8-53.1 (A & B), N.M.S.A., 1953 Comp., permits recovery from the parent, guardian, or person having custody of an unemancipated minor under the age of 18 for malicious or willful destruction of property, subject to limitation of \$ 1,000 (plus reasonable attorney's fees if allowed by the court).

Section 13-8-53, N.M.S.A., 1953 Comp. (1969 P.S.) provides that when a juvenile has been found to be within the provisions of the Juvenile Code, the Judge may issue an order to commit the juvenile:

A. 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;

B. to any suitable institution, association, public or private agency or school willing to receive such juvenile, subject to such conditions as the juvenile court may impose;

C. to the Los Lunas hospital and training school or the New Mexico insane asylum, in the event the juvenile court determines that the juvenile is in need of treatment of the type afforded by those institutions;

D. in the event the juvenile is a boy, to the New Mexico boys' school until twenty-one [21] years of age;

E. in the event the juvenile is a girl, to the girls' welfare home until twenty-one [21] years of age; **or**

F. take such other action as the court deems necessary in the best interest of the child. (Emphasis added.)

We do not feel that a Juvenile Court can enter an order directing restitution and also direct commitment to the New Mexico boys' school or the girls' welfare home due to the conjunction "or" contained in Section 13-8-53, **supra**.

Part B of Section 13-8-53, **supra**, if read alone, would cover commitment to the New Mexico boys' school, and subject the juvenile to conditions which the juvenile court might impose. Such "conditions" might include requiring restitution in the form noted in your question.

However, a statute is passed as a whole and not in parts, consequently each part should be construed in light of every other part. Sutherland, **Statutory Construction**, § 4703. Considering that after setting forth the provisions of part B of Section 13-8-53, **supra**, the Legislature proceeded to name two particular institutions in part C of the section, the New Mexico boys' school in part D and the girls' welfare home in part E, we can presume that the enumerated institutions were not to be included in the provisions of part B.

Section 13-8-53.1 (C), N.M.S.A., 1953 Compilation allows the juvenile court to order restitution in certain circumstances. Section 13-8-53.1 (C) provides as follows:

C. Nothing contained in subsections A and B of this section shall be construed as limiting the discretion *{*120}* of the court to issue an order requiring damages or restitution to be paid by the unemancipated minor under the age of eighteen [18] years when such minor has been found to be within the provisions of this Code (13-8-19 to 13-8-73) and it has been found that he has maliciously or willfully destroyed property, real, personal, or mixed, belonging to a municipal corporation, county, township, village, school district, or department, bureau, board, commission, or office of the state of New Mexico, or person, partnership, corporation or association, or religious corporation.

Restitution may be ordered by the juvenile court within the limits and in the manner prescribed by this section.

Our conclusion does not preclude a victim of a juvenile's unlawful act from recovering for damages suffered, even if the juvenile is committed to the boys' school or the girls' home, under the "family purpose doctrine." See **Burkhart v. Corn**, 59 N.M. 343, 284 P.2d 226 (1955); **Lopez v. Barreras**, 77 N.M. 52, 419 P.2d 251 (1966), which provide

for compensation to a victim of a tort committed by an infant under certain factual situations.

It should also be noted that while the Department of Corrections has the exclusive power to parole or release juveniles committed to either the New Mexico boys' school or girls' welfare home, Section 13-8-62, N.M.S.A., 1953 Comp. (1969 P.S.), this does not prevent the governing authority or the superintendents of either of the institutions from notifying the committing Juvenile Court, and receiving recommendations from that court in a manner similar to the adult parole procedure contained in Section 41-17-24, N.M.S.A., 1953 Compilation.