

Opinion No. 79-37

October 17, 1979

OPINION OF: Jeff Bingaman, Attorney General

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TO: Ms. Charlene Knipfing, Chairman, Juvenile Parole Board, 1451 St. Michael's Drive, Santa Fe, New Mexico 87501

CHILDREN'S CODE

The Children's Court can transfer legal custody of an adjudicated delinquent to an agency such as the New Mexico Boys' School, but it cannot specify the length of time of custody.

QUESTIONS

In transferring legal custody of an adjudicated delinquent child to an agency such as the New Mexico Boys' School, can the children's court impose a specific length of time the child is to remain at the Boys' School other than one (1) year?

CONCLUSIONS

No.

ANALYSIS

At your request we have reviewed dispositional orders relating to children emanating from several New Mexico counties. Each order includes a finding that the subject child is delinquent and is in need of care or rehabilitation. The Children's Court, upon this finding, is empowered to impose disposition in accordance with law. Section 32-1-34 NMSA 1978, reads in part:

"B. If a child is found to be delinquent, the court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) Any disposition that is authorized for the disposition of a neglected child;

(2) transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children; or

(3) place the child on probation under those conditions and limitations as the court may prescribe." (Emphasis added.)

OPINION

The New Mexico Boys' School at Springer is an agency responsible for the care and rehabilitation of delinquent children. See **In Re Doe**, 85 N.M. 691, 516 P.2d 201 (Ct. App. 1973)

In each of the orders under review, the court obviously sought to impose disposition in accordance with Section 32-1-34B(2), **supra**. However, each order also attempts to impose time limitations on the disposition and it is these time limitations which bring into question the jurisdiction of the Children's Court.

From the plain language of Section 32-1-34, **supra**, no jurisdiction is expressly conferred on the Children's Court to do more than order transfer of legal custody of the child to the proper agency. There is no express provision which either {90} sets a time limitation (or other condition) nor is there an express provision which permits the court to do so.

Section 32-1-38 NMSA 1978 sets maximum limitations upon any judgment vesting legal custody in an agency. Judgments are in effect for a maximum of two years. A further limitation is that not more than one year in an institution such as the Boys' School is authorized without further order of the court.

This section limits the jurisdiction of the Children's Court beyond the transfer of legal custody:

. . . a judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children **divests** the court of jurisdiction at the time of transfer of custody . . ." (Emphasis added.)

The legislature clearly contemplated a separation of powers between the committing body--the Children's Court--and the executing bodies--the Boys' School and the Juvenile Parole Board. Section 32-1-38A(1) NMSA 1978 states:

"(1) the juvenile parole board pursuant to the Juvenile Parole Board Act [32-2-1 to 32-2-9 NMSA 1978] has the **exclusive power** to parole or release the child." (Emphasis added.)

There are exceptions to this loss of jurisdiction by the Children's Court. See Section 32-1-38(H) NMSA 1978 where the agency may petition to extend the judgment. See also Section 32-1-12 NMSA 1978, for other grounds involving loss of jurisdiction by the Children's Court.

It is clear that the Children's Court loses jurisdiction upon transfer of the legal custody of the child to an appropriate agency. See **State v. Doe**, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977); **Matter of Doe**, 88 N.M. 632, 545 P.2d 491 (Ct. App. 1976).

In **State v. Doe**, 90 N.M. 572, 566 P.2d 121 (Ct. App. 1977), the Children's Court committed a delinquent child to the Department of Corrections providing that the child not be released without prior approval of the court. The Court of Appeals held that, upon transfer of delinquent children to the Boys' School for care and rehabilitation, the authority of the Children's Court terminates. Similarly, another dispositional order in the same case committed the delinquent child to the Boys' School provided that, before parole or release, the child was to appear before the Court. This was found by the Court of Appeals to be in excess of the Children's Court jurisdiction. In neither case was the Children's Court permitted to go beyond transfer of legal custody.

Compare **Matter of Doe, supra**, wherein it was found that the Children's Court exceeded its jurisdiction in sending a child to a private agency and requiring HSSD to pay the costs while acting under an analogous statute, Section 32-1-35B NMSA 1978. The court stated that the Children's Court may order disposition consistent with the express provisions of the legislative grant of jurisdiction and only for the time and purposes therein stated.

The Children's Court possesses the power, with respect to delinquent children, to transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children, such as the N.M. Boys' School. However, once transfer is ordered, the Children's Court *{*91}* loses jurisdiction to impose any further limitations, conditions or restrictions.

Hence, any attempt by the Children's Court to impose a time limitation, such as the child's 18th birthday, or a shorter period of time than one year, even if well within the time limitations already authorized by statute, is void because in excess of the Children's Court jurisdiction. In passing, it is noted the same conclusion would apply with any attempt by the Children's Court to cut off or eliminate the exclusive power of the Juvenile Parole Board to parole or release the child.

Thus, the orders submitted for review are valid insofar as they order transfer of legal custody to the Boys' School, but the orders are invalid insofar as they seek to impose a commitment for a specific time of less than one year.

ATTORNEY GENERAL

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