**Opinion No. 33-611**

June 27, 1933

**BY:** E. K. NEUMANN, Attorney General

**TO:** Honorable Arthur Seligman, Governor of New Mexico, Santa Fe, New Mexico.

*{*60}* This letter has reference to your inquiry concerning the power of the Governor to pardon persons who have been adjudged juvenile delinquents under the provisions of Article 41, Chapter 35 of the 1929 Code and sentenced to the New Mexico Industrial School under provisions of Section 130-601 of the 1929 Code.

There are two classes of individuals who may be committed to the New Mexico Industrial School; first, any boy under eighteen years of age, who is convicted of any offense less than murder or manslaughter; second, any boy under eighteen years of age who is adjudged to be a juvenile delinquent.

The Governor is granted the power to issue pardons by Section 6 of Article 5 of the Constitution of New Mexico, which provides as follows:

"Subject to such regulations as may be prescribed by law, the governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment."

The word "offense," as used in the Constitution and also as used in Section 130-601 of the 1929 Code, undoubtedly contemplates an offense against the Sovereignty, such offenses commonly being known as crimes* and being classified as either misdemeanors or felonies. The use of the word "offense" with reference to the pardoning power of the Governor apparently means some kind of criminal offense. Our Supreme Court has held that this word covers the offense of criminal contempt of court. Ex parte McGee, 31 N.M. 276, 242 Pac. 332. Undoubtedly it has a very broad meaning and covers all classes of acts against the peace and dignity of the State of New Mexico which are contrary to the laws of this State.

As to the first class of individuals *{*61}* above mentioned who may be committed to the New Mexico Industrial School there would seem to be little doubt that they are within the pardoning power of the Governor. The difficulty arises in determining the status of the second class of persons so committed.

Under the provisions of Article 41, Chapter 35 of the 1929 Code, the judgment of the juvenile court in cases which come under its jurisdiction must be merely that the juvenile delinquent is to be considered as a ward of the juvenile court. (35-4105, 1929 Code). It is specifically provided that such an order (or judgement, if it may be considered a judgment) shall not "be deemed to be a conviction of crime." It is apparent from this language, as well as the language used in 130-601 of the 1929 Code. where the

legislature clearly distinguishes between boys convicted of an offense and boys adjudged to be juvenile delinquents, that there was no intention on the part of the legislature that boys proceeded against under the juvenile delinquency act should be considered as being convicted of an offense.

Our Supreme Court recently decided that there is no appeal from a judgment of the juvenile court in cases involving juvenile delinquency. 36 N.M. 80, 8 Pac. (2nd) 786. If there can be no appeal from an order of the juvenile court, adjudging a person to be a juvenile delinquent and a ward of the court, it can hardly be seen how such a judgment could be considered as conviction of an offense.

The authorities upon the question here involved are very few. In fact, I have been able to find only one case which specifically deals with the question under discussion. That case, however, supports the view expressed in this opinion. It is the case of In Re Mason, 3 Wash. 609, a portion of the court's opinion in this case is herewith quoted:

"* * * In the first place, the reform school is not in any sense a penal institution or a prison but a school. Three classes of infants may be committed there: (1) Those who have neither homes nor friends -- vagrants; (2) those who have homes and friends, but are unmanageable there; (3) those who have been convicted of offenses against the laws of the state less than murder or manslaughter. Those in the first two classes have committed no legal offense, but the state, in the absence or inability of friends to control and care for them, charitably takes them into its own charge, and proceeds to educate them in all the branches taught in the public schools of the state, as well as in morals, temperance, frugality and industry. They are not subject to the penal laws of the state, have no right to trial by jury (Ex parte Crouse, 4 Whart. 1), and do not come within pardoning power, any more than persons committed to the insane asylums. They are wards of the state, which stands to them in loco parentis, and whose courts are its agents to make commitments, after which the trustees take full charge and control of them until their arrival at the age of eighteen years, or it is determined that their presence is demoralizing and injurious to the school."

It follows, from the above, that it is my opinion the Governor does not have the power to pardon boys sentenced to the Reform School who have merely been adjudged juvenile delinquents under the provisions of Article 41, Chapter 35, 1929 Code, but that the Governor does have the power to pardon boys that have been committed to the Reform School in cases where they have first been convicted by a court of competent jurisdiction of an offense against the peace and dignity of the State.

By: QUINCY D. ADAMS,

Asst. Attorney General

n* "Offense" is synonymous with crime. Ex parte Brady (Ohio) 157 N.E. 69.