

Opinion No. 39-3170

June 8, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Hon. Fred W. Allen, Superintendent, New Mexico Industrial School, Springer, New Mexico.

{*61} This office is in receipt of your letter of June 5 requesting an opinion upon the correspondence enclosed between yourself and Judge Numa C. Frenger.

Your request seems to call for statutory interpretation of the custody and control of inmates of the New Mexico Industrial School. Chapter 130, Section 601 of the 1929 Compilation, apparently states that there are two classes of individuals who may be committed to the New Mexico Industrial School. First, any boy under 18 years of age who is convicted of any offense less than murder or manslaughter; second, any boy under 18 years of age who is adjudged to be a juvenile delinquent. As to the first class of inmates, it is my opinion that the inmate sentenced must complete his sentence unless pardoned by the Governor of the State of New Mexico. The Governor is granted the power to issue pardons by Section 6 of Article 5 of the Constitution of the State of New Mexico.

As to the second class of inmates, Chapter 35, Section 4105 of the 1929 Compilation makes a juvenile delinquent a ward of the court and expressly states "in no case shall an order adjudging a person to be a ward of the juvenile court be deemed to be a conviction of crime."

Chapter 130 of Section 601 of the Compilation of 1929 reads in part "the court may, if in its opinion the accused is a proper subject therefor, order him committed to said school until he shall attain the age of 21 years or until he shall be sooner paroled, released or removed by order of the court."

Chapter 35, Section 4109 of the 1929 Compilation, states the power of the court over juvenile delinquents and reads in part:

"The juvenile court shall have power to parole at any time before or after sentence any juvenile delinquent under the care of the probation officer or any other suitable person or institution who shall cause said juvenile delinquent to return or report to the court or referee thereof, at such time or times as the court may order . . . in case such juvenile delinquent shall disregard the terms of his parole or shall be incorrigible, said juvenile court shall have full power to cause such juvenile delinquent to be brought before it for trial and to award such sentence as the law may authorize,".

You will find a definition of a juvenile {*62} delinquent and an incorrigible in Chapter 35, Section 4101 of the 1929 Compilation

It is my opinion that a juvenile delinquent and incorrigible, being the second class of inmates at the New Mexico Industrial School, remains at all times subject to the orders of the district judge committing the inmate and that he shall remain at said school until he shall attain the age of 21 years or until he shall be sooner paroled, released or removed by order of the court.

From the correspondence submitted, I am unable to state to which class Reymundo Parra belongs, but if of the first class I seriously doubt that anyone has been authorized by the Legislature to grant the boy temporary leave of absence. If the Parra boy comes under the second class, I believe that the judge of the district court of the county from whence he was committed, in this case Judge Frenger, upon your application and a proper showing being made to him could issue an order granting the boy the right to report to Judge Frenger and receive instructions as to his future status.

I believe the construction of the juvenile delinquent laws should be very liberal because the purpose of the law and of the Industrial School is one of reformation rather than of punishment, but I feel satisfied when an inmate is out of the custody and confines of the New Mexico Industrial School he must remain subject to the control and orders of the district judge because the state has made him a ward of the court.

By: GEORGE LOUGEE,

Asst. Atty. Gen.