

Opinion No. 57-95

May 13, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: TO: Hon. Victor C. Breen, District Attorney, Tenth Judicial District, Tatum, New Mexico

QUESTIONS

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1. Is § 42-4-1, N.M.S.A., 1953 Comp., which provides in part for the detention, reformation and instruction of boys under 18 years of age at the New Mexico Industrial School who may be convicted of any offense less than murder or manslaughter or who may be adjudged a juvenile delinquent, repealed by the Juvenile Code?
2. If the above Section has not been repealed, does the Section require the mandatory sentencing to the Industrial School of a boy under 18 convicted of involuntary manslaughter?
3. If the sentence for involuntary manslaughter is suspended, can the court, as one of the terms and conditions of the suspended sentence, impose costs to be served in the county jail?
4. If sentence is suspended, can one of the terms or conditions of the suspension be that a certain time be served in the county jail?

CONCLUSIONS

1. No.
2. No.
3. See opinion.
4. No.

OPINION

ANALYSIS

Question 1 involves a Statute, Section 42-4 supra, which relates to the purpose of the New Mexico Industrial School and to the commitment of juveniles. The Juvenile Code,

which is Article 8 of Chapter 12, Public Health and Welfare, naturally contains provisions relative to the detention and commitment of juveniles. As indicated above, we have a Statute and the Juvenile Code dealing with the same general subject matter. Section 42-4-1 supra, states:

"The New Mexico Reform School at Springer may also be designated and known as the New Mexico Industrial School and shall be used for the detention, reformation and instruction of boys under eighteen years of age who may be convicted of any offense less than murder or manslaughter, or who may be adjudged to be juvenile delinquents.

"When any boy under eighteen years of age is convicted of any such offense or is adjudged to be a juvenile delinquent, 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 twenty-one years or until he shall be sooner paroled, released or removed by order of the court."

Attorney General's Opinion No. 5065 of 1947-48 states that there are two classes of juveniles who can be committed to the school: 1. any boy under eighteen years of age who is convicted of any offense less than murder or manslaughter; and (2) any boy under eighteen years of age who is adjudged to be a juvenile delinquent.

The Juvenile Court is vested with exclusive jurisdiction over a juvenile under eighteen years of age at § 13-8-26, N.M.S.A., 1953 Comp., Pocket Supplement. Section 13-8-27, N.M.S.A., 1953 Comp., Pocket Supplement, states that juveniles shall be charged only in juvenile court but that nothing in the act shall be construed to prevent a juvenile over the age of fourteen years of age from being charged with a felony under the laws of the State, if such juvenile is not a proper subject for reformation or rehabilitation.

Section 13-8-53, N.M.S.A., 1953, Pocket Supplement, relates to the provisions for commitment of juveniles, and is as follows:

"When any juvenile has been found to be within the provisions of this Code, the judge may issue an order to commit such 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) In the event the juvenile is a boy, to the New Mexico Industrial School for Boys, until twenty-one years of age, unless sooner discharged by the order of the juvenile court;
- (d) In the event the juvenile is a girl, to the Girls' Welfare Home until twenty-one years of age, unless sooner discharged by the order of the juvenile court;

(e) Or take such other action as the court deems necessary in the best interest of the child."

As indicated above, the juvenile court at sub-section (c) can order the detention of a boy in the New Mexico Industrial School, or can take such other action as the court deems necessary in the best interest of the child.

Section 42-4-1, N.M.S.A., 1953 Comp., was not repealed specifically by the Juvenile Code, nor was there any reference made to the above section indicating that the provisions of the Juvenile Code were intended to supercede § 42-4-1. Repeals by implication generally are unfavored. In cases of statutes relating to the same or similar matters, the rule is laid down in 82 CJS, § 292, as follows:

"As a general rule there can be no implied repeal of one act by another unless both acts deal with, or relate to, the same subject matter. However, a statute is not to be deemed repealed merely by the enactment of another statute on the same subject. **The question is one of legislative intent.** One or two affirmative statutes on the same subject matter does not repeal the other if both can stand, as where they are cumulative. The court will, if possible, give effect to all statutes covering, in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated."

See also **Ellis vs. New Mexico Construction Company**, 27 N.M. 312,201 P. 487, and **Territory vs. Riggles**, 16 N.M. 713, 120 P. 318.

The two statutes in our opinion, are not irreconcilable and we do not believe that the Juvenile Code was intended to repeal Section 42-4-1. As previously indicated, § 42-4-1, which is found at Chapter 42, Penal and Reformation Institutions, is merely a commitment statute, and we believe it should stand with the Juvenile Code as cumulative law on the same subject.

In answer to question 2, we do not believe that the language used in § 42-4-1 mandatory provides for the lodging of a juvenile convicted of involuntary manslaughter in the New Mexico Industrial School. The language used in the Statute is:

". . . the court may, if in its opinion the accused is the proper subject therefor, order him committed to the said school"

And such language, we believe, is permissive in nature and certainly allows the court to commit the juvenile, but only in cases where he believes the juvenile is a proper subject for detention.

In answer to question 3, as previously indicated, the Juvenile Code, under § 13-8-27, supra, provides that a juvenile of fourteen years of age may be charged with a felony. It authorizes the court upon motion to have the trial certified to a court having trial

jurisdiction of the offense, and if the juvenile is convicted he may be committed to the penitentiary in the same manner as if the offense was committed by an adult.

Section 47-17-1, N.M.S.A., 1953 Comp., Pocket Supplement 1955, refers to sentencing and provides:

"Every person who shall be convicted of a felony or other crime punishable by imprisonment in the penitentiary, if judgment be not suspended or a new trial granted, shall be sentenced to the penitentiary. The court in imposing such sentence shall sentence the person for the term as prescribed by law for the particular crime of which he was convicted. The term of imprisonment of any person so convicted shall not exceed the maximum nor be less than the minimum term fixed by law. The release of such person shall be as provided by law: Provided, that the court may, in its discretion, suspend any sentence imposed upon any person convicted of a felony involving a specific criminal intent, unless such person has previously been convicted of a felony involving a specific criminal intent, upon such terms and conditions as it shall deem proper, and such sentence shall go into effect upon order of the court upon a breach of such terms or conditions by the person convicted."

In accordance with the above, we believe that a sentence for involuntary manslaughter may be suspended.

Section 41-13-4, N.M.S.A., 1953 Comp., provides that costs may be assessed against a criminal defendant. If a juvenile were convicted of involuntary manslaughter, we believe that costs could be assessed against him, and if not paid he could be remanded to the custody of the county sheriff, and be lodged in the county jail if he would not or could not pay the costs assessed against him.

In answer to question 4, § 41-17-1, N.M.S.A., 1953 Comp., provides that any person convicted of a felony or other crime punishable by imprisonment, unless judgment is suspended, shall be sentenced to the penitentiary. Further, that such person so convicted shall serve a term not to exceed the maximum sentence or less than the minimum sentence provided by law. In view of the above, we answer question 4 in the negative. The Statute clearly indicates that if a person is convicted of a felony punishable by imprisonment he shall be sentenced to the penitentiary unless his sentence is suspended. The Statute also indicates that the term served must be within the statutory minimum and maximum requirements.