

**Opinion No. 58-185**

September 11, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

**TO:** Hon. Ben Chavez, State Auditor, Capitol Building, Santa Fe, New Mexico

**QUESTION**

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Are Social Security payments made by the Federal Government to the New Mexico Industrial School at Springer for a juvenile subject to use by the New Mexico Industrial School to defray expense of care and support for said juvenile?

CONCLUSION

No.

**OPINION**

ANALYSIS

The New Mexico Industrial School at Springer operates under an annual appropriation from the legislature. It also receives a share of the school equalization fund. We must assume that its direct appropriation, together with the school funds that it receives is sufficient to maintain its operation.

§ 402 (d) Title 42, United States Code Annotated sets out Children insurance benefits under the Social Security Act and provides in part as follows:

"Every child (as defined in section 416 (e) of this title) of an individual entitled to old-age insurance benefits, or of an individual who died a fully or currently insured individual after 1939, . . .

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: such child dies, marries, is adopted (except for adoption by a step-parent, grandparent, aunt or uncle subsequent to the death of such fully or currently insured individual) attains the age of eighteen and is not under a disability (as defined in section 423 (c) of this title) which began before he attained such age or ceases to be under a disability (as so defined) on or after the day on which he attains age eighteen . . ."

In our opinion language found in the above cited section bestows a property right upon a child who has qualified for insurance benefits under said section which cannot be taken away without due process of law. An analogous case in support of our position although not directly in point is the case of **Ewing v. Gardner** 185 F.2d 781 wherein the Ohio District Court held that a right of a wage earner to primary benefits under § 402 of the Act is not a gratuity but is a property right which can be enforced by court actions. Having determined that a child who has qualified for benefits under § 402 (d) of the Act is personally entitled to the benefits provided for therein we proceed to a determination of whether any existing state law affects this right. We think not.

The Act creating the New Mexico Industrial School and regulating its operation has been compiled as §§ 42-4-1 through 42-4-20, N.M.S.A., 1953 Compilation and 1957 Pocket Supp. At no place in the Act is there statutory authority for the management of the school to use the personal property of whatever nature of the inmates to defray their expenses for care and support. Furthermore this office is of the opinion that a statute authorizing such action, if enacted, would be unconstitutional as constituting a taking of property without due process. Juveniles, during the time that they are detained by the school, are wards of the State and are not liable for the expenses incurred by the school during their confinement.

We therefore conclude that Social Security payments made by the Federal Government to the New Mexico Industrial School at Springer for a juvenile constitute the personal property of the juvenile and may not be used by the school to defray expenses of his care and support. Said moneys should properly be placed in a trust account to be paid to the child upon his release.