

Opinion No. 60-87

May 17, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. C. H. Schrader Acting Superintendent Los Lunas Hospital & Training School
Los Lunas, New Mexico

QUESTION

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Do the commitment portions of Sec. 34-3-6, N.M.S.A., 1953 Comp., and Sec. 13-8-53, N.M.S.A., 1953 Comp. (PS), conflict?

CONCLUSION

No.

OPINION

{*450} **ANALYSIS**

The pertinent portion of Sec. 34-3-6, supra, reads as follows:

"* * * if upon examination and hearing had, such person shall be found to be mentally defective, within the definition and provisions of this act, the court may enter its order for the transfer of the mentally defective person to the institution herein created. * * * That before such mentally defective person is transported to said institution, the court shall inquire of the superintendent thereof whether accommodations can be made for such mental defective person, and if he be informed there cannot, then the name of the mental defective person shall be placed on the waiting list by said superintendent until such time as accommodations can be furnished for such person, notice of which shall forthwith be communicated to such court. * * *"

The germane portion of Sec. 13-8-53, supra, reads as follows:

"When any juvenile has been found to be within the provisions of this Code (13-8-19 to 13-8-73) the judge may issue an order to commit such juvenile:

* * *

C. To the Los Lunas Hospital and Training School or the New Mexico Insane Asylum in the event the juvenile court determines that the juvenile is in need of treatment of the type afforded by those institutions;"

It might appear at first glance that these two sections contradict each other in that Sec. 34-3-6, supra, provides that the court may order a mentally defective person sent to the hospital only if there are accommodations available while Sec. 13-8-53, supra, makes no such provision.

However, it is a well-known rule of law that repeals by implication are not favored and two sections must be harmonized if at all possible. Such is the case here. As we view the problem, these two sections do not conflict. Sec. 34-3-6, supra, provides that mentally defective persons may be committed to the hospital by the courts of this State. It also provides that before the person is transported to the institution, the court must inquire whether there are accommodations available and, if not, the person must not be sent to the hospital but placed upon a waiting list. Sec. 13-8-53, supra, provides that juvenile courts may commit juveniles to the hospital. It does not, however, give the court the right to order the hospital to accept juveniles when no accommodations are available. Once the juvenile has been committed to the hospital under 13-8-53, supra, the judge must then follow a procedure set forth in 34-3-6, supra, insofar as it pertains to determining whether accommodations are available and placement upon a waiting list.

{*451} Viewed in this manner, the two sections do not conflict. Sec. 13-8-53, supra, only grants the juvenile judges the power to commit juveniles to the hospital. It does not give the judge the right to circumvent the procedures to be followed thereafter set forth in Sec. 34-3-6, supra.

By: Boston E. Witt

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