

## Opinion No. 64-56

April 29, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Donald J Wilson, Assistant Attorney General

**TO:** Mr. James W. Musgrove, Assistant District Attorney, Eleventh Judicial District, 112 North Behrend, Farmington, New Mexico

### QUESTION

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Is a law enforcement officer legally authorized to pick up a juvenile while on school grounds, at the request of the juvenile probation officer or juvenile attorney, for the purpose of questioning concerning an offense in which the juvenile may or may not be implicated?

#### CONCLUSION

See Analysis.

### OPINION

#### ANALYSIS

Section 13-8-19, et seq., N.M.S.A., 1953 Compilation (PS) establishes a procedure whereby a juvenile may be taken into custody without a warrant or court order.

Section 13-8-42, N.M.S.A., 1953 Compilation (PS) provides that:

"When any juvenile found violating any law or ordinance, or **whose surroundings are such as to endanger his welfare**, is taken into custody, such taking into custody shall not be termed an arrest. The jurisdiction of the court shall attach from the time of such taking into custody. When a juvenile is taken into custody, his parent, guardian or custodian shall be notified at the earliest possible time. Whenever advisable, such juvenile shall be released to the custody of his parent or other responsible adult who shall bring the juvenile to the court or probation office at a stated time or at such time as the juvenile attorney, probation officer or court may direct. If such person shall fail to produce the juvenile as agreed the court may take appropriate action.

Any officer detaining a juvenile shall immediately notify the probation officer or juvenile attorney, and shall file a written report of the arrest and his actions, with the probation officer or juvenile attorney." (Emphasis added).

In Attorney General Opinion No. 60-166, dated September 21, 1960, it was held that police, sheriff's department or juvenile court officials do have authority to take children into custody while they are on school grounds for the purpose of questioning. The reasons behind this conclusion were that the taking into custody of juveniles is clearly contemplated by Section 13-8-42, supra; that the juvenile court is intended by law to act in behalf of juveniles as a parent or guardian; and that the protection of children, which is the guiding principle of the juveniles acts, requires that police have broader powers to take juveniles into custody than to arrest adults.

In Attorney General Opinion No. 62-32, dated February 9, 1962, it was held that "without a warrant signed by the juvenile judge, without the juvenile having violated a law or ordinance in the officer's presence, and without the officer being **personally** aware of any endangering of the juvenile's welfare because of his surroundings, the officer cannot be said to have any legal grounds for the apprehension of the juvenile." In Attorney General Opinion No. 62-107, dated August 8, 1962, which is supplemental to Opinion No. 62-32, it was held that a juvenile may be taken into custody when a police officer or probation officer believes that the juvenile's surroundings are such as to endanger his (the juvenile's) welfare. Emphasis was placed on Section 13-8-42, supra, and the opinion expressed that the phrase "whose surroundings are such as to endanger his welfare" should be broadly construed in order to effectuate the purpose of the Juvenile Code. It should be pointed out, however, that Opinion No. 62-107 was based on a fact situation where the juvenile was present with one adult and it appeared that the adult had committed a crime. The juvenile's surroundings, therefore, were such as to endanger his welfare.

In view of Opinion No. 62-32, which should control inasmuch as it is the later opinion, it is our opinion that a law enforcement officer cannot detain or pick up a juvenile while on school grounds or any where else in the absence of a warrant or circumstances or surroundings which indicate that the juvenile's welfare is endangered, or in the absence of the juvenile being found violating some statute or ordinance.