

Opinion No. 90-16

September 17, 1990

OPINION OF: HAL STRATTON, Attorney General

BY: Katherine Zinn, Assistant Attorney General

TO: Mr. Michael J. Lewis, District Attorney, Sixth Judicial District, P.O. Box 1798, Deming, New Mexico 88031

QUESTIONS

May a child alleged to be delinquent or in need of supervision, and the child's parents, sign a waiver which would allow the child to be detained pending final adjudication in a local jail facility with total sight and only partial sound segregation from adult jail detainees?

CONCLUSIONS

No.

ANALYSIS

This question came to you through Sheriff Fred G. Gifford, Luna County Sheriff's Department. Sheriff Gifford feels that such proposed detention of juveniles pending adjudication under the Children's Code, NMSA 1978, Section 32-1-1 et seq. (Repl. Pamp. 1989), would be best for the child in that the child could remain in close proximity to parents or guardians rather than being transferred to another, possibly more distant, facility as provided under NMSA 1978, Section 33-6-7 (Repl. Pamp. 1990).

Section 32-1-25 of the Children's Code is the relevant statute regarding pre-adjudicatory detention of children alleged to be delinquent or in need of supervision. The pertinent subsections relevant to your inquiry are Section 32-1-25(A)(4) and (B)(4). Those subsections provide, respectively, that an alleged delinquent child or child in need of supervision may be detained in:

A.(4) any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined under Section 32-1-34 NMSA 1978, designated by the court which meets the standards for detention facilities under the Children's Code and federal law.

* * *

B.(4) any other suitable place, including a detention facility that has been certified for the detention of alleged or adjudicated children in need of supervision....

Under Section 32-1-6 of the Children's Code, the New Mexico Youth Authority is statutorily obligated to set standards for all juvenile detention facilities and to certify as Authority-approved only those juvenile detention facilities that meet those standards. No child may be detained in any detention facility unless that facility has been certified by the Youth Authority. § 32-1-6. It is our understanding under the standards promulgated by the Youth Authority that if a juvenile detention facility is located within, and as a part of, a jail or other facility used for the incarceration of adults, "the juvenile detention area must be so located and arranged so as to be **completely** separated from incarcerated adults by both sight and sound barriers." Youth Authority Regs., Part 4.11 **Local Facilities for the Detention of Children, Standards** (1981) (Emphasis added).

Thus, under Sheriff Gifford's proposed plan of waiver, a juvenile detention facility providing for only partial sound segregation would not pass certification standards adopted by the Youth Authority. If the proposed facility does not meet the required standards, i.e., total sight and sound segregation from adult detainees, then the Youth Authority could not certify the facility and, under Section 32-1-6, the facility could no longer operate to detain juveniles. The child's waiver would have no effect whatsoever on the certification process as required by statute.

Statutes must be given effect as written and, where free from ambiguity, there is no room for construction. *Wittkowski v. Corrections Department of New Mexico*, 103 N.M. 526, 710 P.2d 93 (Ct. App. 1985); *State v. Elliott*, 89 N.M. 756, 557 P.2d 1105 (1977). The provisions of Section 32-1-6 are clear ---- no child shall be detained in a detention facility unless it has met all standards and is certified as approved by the Youth Authority. To be so certified and approved, a detention facility must provide detained children with complete sight and sound segregation from adult inmates. A waiver of these requirements by the child and his parents would not relieve the Youth Authority of its statutory duty to enforce its certification standards as required by law. § 32-1-6.

Moreover, because Section 33-6-7 provides for the transfer of such children to other facilities, the legislature obviously intended and recognized that such transfers would sometimes be necessary. If a properly certified detention facility is unavailable near the child's home, clearly a transfer is justified and would be in the best interest of the detained child.

ATTORNEY GENERAL

HAL STRATTON Attorney General