

Opinion No. [29-35]

August 13, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Girls' Welfare Board, Albuquerque, New Mexico. Attention: Florence Perkinson, Superintendent.

GIRLS' WELFARE BOARD -- No authority over ward's estate.

OPINION

Reference is made to your letter of the 9th instant, in re girls, wards of the Court, who have been placed in the custody of the Girls' Welfare Board. You have asked several questions relative to your duties, legal responsibility and powers.

First, you ask,

"When a girl is made a ward of the Court but placed in the custody of the Girls' Welfare Board, is the Board the guardian of the girl and her effects and would you construe it to be the legal duty of the present Board and Superintendent to take steps to collect money owing the girls which debt arose previous to the administration of the present Board but during the girls' incarceration in the Girls' Welfare Home? If so what steps would you advise us taking?"

This Board being created by Legislative act, in my opinion has no powers beyond such as are conferred by statute and such as are incidental thereto, that is, necessary in the exercising of the powers so conferred.

The Legislative Act by which a "Girls' Welfare Board" was created and its powers prescribed, is Chapter 86 of the 1919 Session Laws of New Mexico. The powers being enumerated in Section 2 of that act which reads as follows:

Section 2. "The said Board shall have power to receive, educate, maintain, discipline, control and parole girls under the age of eighteen years committed to it by the District Judges of the State: Provided, that the approval of the court committing the girl shall be first had to the terms of all paroles."

A study of the section just quoted discloses no authority whatever over the property or estates of girls committed to your care, nor is such authority necessary to the enjoyment of the powers specifically granted. I am of the opinion a Court would hold that you have no control over the property or estates of those committed to your care.

Your guardianship, under the commitment by which a girl is placed in your care, is, in my opinion, but a guardianship of the person and subject to supervision by the Court.

Even a natural guardianship is of the person only. The father or other natural guardian has no right of custody or control over the estate, real or personal of the ward unless conferred on him by statute. Even if he bring a suit in the child's name as his next friend, he has no right to demand and receive the property recovered. For that purpose a guardian of the estate must be appointed. Of course, this rule does not apply to a suit to collect the earnings, since the cause of action in such case is the property of the father by virtue of his parental rights and not of the child. This exception, that is, the right of a father to collect earnings, would not apply in the case of the Board since such earnings are not the property of the Board.

This, I believe, fully answers the paragraph above quoted from your letter.

As to the paroling of girls concerning which you ask and enumerated among the powers conferred by statute, you will note that the power to parole is subject to the approval of the Court committing the girl. Thus, in effect leaving with the Court the power and giving to the Board simply the right to recommend. That is, irrespective of the commitment, the statute gives you no power to parole without the approval of the Court as to the terms of such parole.

From what has been said above, you will see that it is the opinion of the office that you have neither the right to collect nor to pay out money belonging to girls in your care. If girls in your custody owe money it is a personal matter between them and their creditors and you are not charged with the duty or responsibility of making collections for such creditor or creditors.

If girls are by you permitted to earn money while under your custody, such permission is merely a privilege granted by you under your authority to control. But any money so earned by one of the girls, belongs to her or at least does not belong to you and you would have no standing in Court to enforce collection thereof.

Mr. Otero advises me that he has already written you relative to the attitude of this office toward the adjustment made by the Comptroller. From verbal opinions expressed in conversations and from correspondence which has passed heretofore, you will understand it is the opinion of this office that you are not liable for acts of former Boards or employees of such Boards, but responsible only from the time you assume charge.

I feel disposed to add that it would seem natural and probable that girls in your custody, their parents and, in individual cases, those who stand in loco parentis for the convenience of the girls may desire that your Superintendent receive for them personal effects and possessions, including money, and care for such property during such time as may be necessary. This appears to me permissible but the relationship between the girls and the Superintendent in such matters is more or less a personal one, the Superintendent being probably answerable as bailee.