



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable W. K. Baldrige
County Attorney
Denton County
Denton, Texas

Dear Sir:

Opinion No. O-7043

Re: The authority of the Superintendent of the Gatesville School for Boys to refuse readmittance of a parolee who is now eighteen years of age, but who was admitted to said school when under seventeen years of age.

Your letter of January 15, 1946, requests an opinion of this department in reply to the questions stated by you as follows:

"After a child reaches the age of seventeen years, can the Court through the revocation of a parole or modification of a former judgment order the child committed to the Gatesville State School for Boys? Can the Superintendent of the Gatesville State school for Boys rightfully and lawfully refuse to admit a child eighteen or nineteen years of age who was declared a juvenile delinquent at a time when he was fifteen years of age on the sole ground that said child is over the age of seventeen years and can therefore be punished for his criminal acts?"

The facts upon which your request is based as follows:

"I give you the following facts which constitute the basis for the request: On the 5th day of March 1942, a male child fifteen years of age, who was duly and legally declared to be a

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delinquent child by the County Court of this County and committed to the Gatesville State School for Boys until he shall reach the age of twenty one years to wit: November 2, 1947.

"During the afternoon of the day upon which said child was declared to be a delinquent child and committed to the Gatesville State School for Boys, the mother of said child together with the child's uncle appeared before the County Judge, being also the Judge of the Juvenile Court, and convinced said Court that it would be to the best interest of said child for him to be paroled to his uncle who was a resident of Oklahoma City, Oklahoma. There upon the Court did render its order suspending his previous order committing the child to the Gatesville State School for Boys and paroled the child to his uncle in Oklahoma City during his good behavior and subject to the further order of the Court.

"Thereafter on the 14th day of August 1943, said Court rendered an order finding said child guilty of other acts constituting him a delinquent child and did on that date revoke the parole granted to him on the 5th day of March 1942 and did order the said child to be delivered to the custody of the Sheriff and by him transported to the Gatesville State School for Boys to serve his sentence rendered by said Court on the 5th day of March 1942.

"Thereafter on or about the 1st day of July 1944, said child was paroled from the Gatesville State School for Boys to his mother who is a resident of this City. Thereafter on the 9th day of January 1946, it was made to appear to the Court that said child had committed other acts constituting him a delinquent child and the parole heretofore granted to said child on or about the 1st day of July 1944, was by said Court revoked and the Court ordered the said child to be delivered to the custody of the Sheriff and by him

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delivered to the authorities at the Gatesville State School for Boys to complete and serve the sentence imposed upon him on the 5th day of March 1942.

"On the 11th day of January 1946, the sheriff of this County transported the said child to the Gatesville State School for Boys in compliance with the Juvenile order of this County. The superintendent of the Gatesville State School for Boys refused to accept this child on the ground that he is more than seventeen years of age and is now an adult insofar as the criminal law is concerned."

Article 2338-1 (Vernon's Ann. Civ. Stat., Acts 1943, 48th Leg.) reads in part as follows:

"Sec. 24. Articles 2329 and 2338 of the Revised Civil Statutes of Texas, 1925, are hereby repealed.

"All laws and parts of laws in conflict herewith are also repealed."

However, the Act contained a saving clause as follows:

"Sec. 22. Saving Clause. In all cases where the court has continuing jurisdiction of the children already adjudged delinquent, any of the Acts herein repealed shall continue in force as applicable to said children, and the provisions of such statutes may continue to be exercised with reference to all such children where such jurisdiction has already attached."

In *Maldonado v. State* (184 S. W. (2d) 859), the Court of Civil Appeals of Texas, San Antonio, stated in part as follows:

"Since the order of May 27, 1943, provides for continuing jurisdiction of the Juvenile Court over the minor, Charles Maldonado, (Art. 2338, Vernon's Ann. Civ. Stat., Amended Acts 1941, 47th Leg.) this

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case comes within the provisions of the saving clause of the Juvenile Act of 1943, and consequently the laws mentioned as being repealed in Sec. 24 of the Act, are nevertheless effective insofar as this case is concerned."

In Opinion No. O-4603 of the Attorney General of Texas, July 18, 1942, the following question was submitted by the Honorable R. N. Winship, Jr., Superintendent, Gatesville State School for Boys, for an opinion:

"Where the committing court has recalled a boy, may it later order his return to this school if the boy is then more than seventeen years of age?"

This question was answered as follows:

"Under Art. 2338, of the Revised Civil Statutes as amended in 1941, the trial court has been given full power and authority to change its order of commitment by the following language:

"Such order shall be subject to change by further orders of the court with reference to such child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody whenever, in the judgment of the court, it is to the best interest of the child to do so."

"If the trial court who issued the order committing the boy to the institution should make any further order relative to the care, custody or control of the boy committed, it will, of course, be your duty to obey the order or orders of the trial court, regardless of how you receive notice thereof."

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Accordingly, you are respectfully advised that if the commitment complies with the terms of our statutes, it is the opinion of this department that, under the facts stated in your letter, the Superintendent of the Gatesville State School for Boys does not have the authority to refuse re-admittance of a parolee who is now eighteen years of age, but who was first admitted to said school when under seventeen years of age.

However, while we do not know what act or acts which are referred to in the request as "other acts constituting him a delinquent child" as found by the Court and which resulted in the Court Order of January 6, 1946, it should be pointed out that such acts, whether they are felonies or misdemeanors, could not constitute this eighteen or nineteen year old boy a delinquent child, for only those boys under seventeen years of age may be so classified. Such acts though would be sufficient reasons for the Court to revoke the parole previously granted. We wish to point out further that any boy who had previously been adjudged a "delinquent child" may be prosecuted for any offense, whether it be a misdemeanor or felony, committed against the laws of this State after he becomes seventeen years of age, and the fact that he had previously been adjudged a "delinquent child" does not give him immunity from prosecution for such offenses.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Robert L. Lattimore, Jr.

By

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APPROVED JAN 31 1946
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