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ARIZONA ATTORNEY GENERAL

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

August 13, 1968

DEPARTMENT OF LAW OPINION NO. 68-13 (R-87)

REQUESTED BY: THE HONORABLE JERRY L. SMITH,
Coconino County Attorney

- QUESTIONS:
1. Can the Institute of Human Development at Northern Arizona University use corporal punishment, such as a whipping, to discipline minors sent to that institution by authorities from Fort Grant?
 2. Can the Institute of Human Development at Northern Arizona University use corporal punishment, such as a whipping, to discipline minors sent to that institution by the State Department of Corrections?
 3. Can the Institute of Human Development at Northern Arizona University use corporal punishment, such as a whipping, to discipline minors sent to that institution by public schools, private parties or other social agencies?

- ANSWERS:
1. Yes.
 2. Yes.
 3. Yes.

QUESTIONS ONE, TWO AND THREE

Attorney General's Opinion No. 55-202, dated October 7, 1955, affirmed the right of the Superintendent of the State Industrial School (Fort Grant) to administer corporal punish-

to an inmate of that institution, "so long as [it] * * * does not verge on willful inhumanity or oppression."

Since the statutes cited in Opinion No. 55-202 have been supplemented by the Legislature while others have been added, the ultimate conclusion drawn in that opinion with regard to the use of corporal punishment by those who stand in loco parentis to children has been somewhat modified.

The pertinent statutes today are:

A.R.S. § 13-245.

"Aggravated assault or battery; definition;
punishment

"A. An assault or battery is aggravated when committed under any of the following circumstances:

1. When the person committing the offense goes into a private home and is there guilty of assault or battery.
2. When committed by a person of robust health or strength upon one who is decrepit.
3. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.
4. When the instrument or means used is such as to inflict disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.
5. When a serious bodily injury is inflicted upon the person assaulted.
6. When committed with a premeditated design and by the use of means calculated to inflict great bodily injury.

B. An aggravated assault or battery shall be punished by a fine of not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail not to exceed one year, or both, or by imprisonment in the state prison for not less than one nor more than five years.

C. An aggravated assault or battery committed by a person armed with a gun or deadly weapon is punishable by imprisonment in the state prison, for the first offense, for not less than five years, for a second offense, not less than ten years, for a third or subsequent offense, not less than twenty years nor more than life imprisonment, and in no case, except for first offense, shall the person convicted be eligible for commutation of sentence. As amended Laws 1962, Ch. 88, § 1; Laws of 1967, Ch. 62, § 1." (Emphasis supplied)

A.R.S. § 13-246

"Justification for use of force; limitation

"A. Violence used to the person does not amount to assault or battery in the following cases:

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward and the teacher over the scholar.
2. For preservation of order in a meeting for religious, political or other lawful purposes.
3. For preservation of the peace, or to prevent the commission of an offense.
4. In preventing or interrupting an intrusion upon the lawful possession of property.
5. In making a lawful arrest and detaining the party arrested when authorized by law, or in obedience to the lawful order of a magistrate or court, or in overcoming resistance to such lawful order.
6. In self-defense, or defense of another against unlawful violence to his person or property.

B. Only that degree of force may be used which is necessary to accomplish the lawful purpose."
(Emphasis supplied)

A.R.S. § 13-247

"Assault or battery without necessity by officer;
punishment

"A public officer who, under color of authority, without lawful necessity, assaults or beats any person, shall be punished by a fine not exceeding one thousand dollars, by imprisonment in the county jail for not to exceed six months, or both."

A.R.S. § 13-842

"Permitting life, health or morals of minor to be imperiled by neglect, abuse or immoral associations; punishment

"A person having custody of a minor under sixteen years of age who wilfully causes or permits the life of such minor to be endangered, its health to be injured or its moral welfare to be imperiled, by neglect, abuse or immoral associations, is guilty of a misdemeanor."

A.R.S. § 31-127

"Abuse of prisoner; penalty

"A public officer who is guilty of wilful inhumanity or oppression toward a prisoner under his care or in his custody shall be punished by a fine not exceeding one thousand dollars, by imprisonment in the county jail for not to exceed six months, or both."

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A.R.S. § 13-246(1) clarifies that the use of force is justified in moderate amount when exercised by "the parent over the child, the guardian over the ward, and the teacher over the scholar." Thus anyone in whose legal custody a child is placed would appear to have the right to apply corporal punishment "in moderate restraint and correction." We quote from Attorney General's Opinion 55-202:

"It is generally agreed that one standing in loco parentis to a child is subject to the same restrictions and partakes of the same rights exercised by the natural parent. 67 C.J.S., Parent and Child, Sec. 73, page 805. Donnelly v. Territory, 5 Ariz. 291, 52 P. 368."

The latest Arizona case to interpret the right of a parent to punish his child is State v. Hunt, 2 Ariz.App. 6, 406 P.2d 208 (1956):

"Corporal punishment of a child by its parent is not prohibited by law in this state but the use of immoderate or excessive physical violence against a child by a parent for correction or discipline purposes is an aggravated assault and battery.

"One cannot expound an inflexible rule which would define what, under all conditions, would be reasonable or excessive force in the disciplining of a child. As children vary in degrees of sensitivity, responsibility and other qualities of character, as well as tolerance to pain, age, sex and physical condition, so must the degree of parental severity vary, especially when balanced against the gravity of the particular offense for which punishment is to be meted out. An error in parental judgment should not as a matter of law brand the act as unreasonable.

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"The test of unreasonableness is met at that point where the parent ceases to act in good faith and with parental affection, and acts immoderately, cruelly or mercilessly, with a malicious desire to inflict pain, rather than a genuine effort to correct the child by proper means." (Emphasis supplied)

In State v. Carpenter, 1 Ariz.App. 522, 405 P.2d 460 (1965), the Court of Appeals declared that a person who abuses a child may properly be charged under both A.R.S. § 13-245 and A.R.S. § 13-842 (supra).

Thus it appears that since Opinion No. 55-202 was issued new and more stringent penal provisions reflecting the increasing concern of Arizonans that those who have the privilege of correcting children do not abuse that privilege have become law. It follows that greater care must be taken by those whose duties might entail correction or discipline of children to insure that any corporal punishment administered is not excessive or cruel. Needless to say, only designated responsible persons should be allowed to apply correctional punishment in an institutional environment, and then only in the presence of responsible witnesses.

CONCLUSION

The Institute of Human Development at Northern Arizona University as well as all state institutions or agencies which may obtain legal custody of a minor have the right to administer necessary and moderate corporal punishment to their wards. There is no reason to distinguish between minors received from the Arizona State Department of Corrections, from its subdivision the Arizona State Industrial School, from public schools, private parties or other social agencies. So long as legal custody of the minor child is in the institution concerned, it stands in

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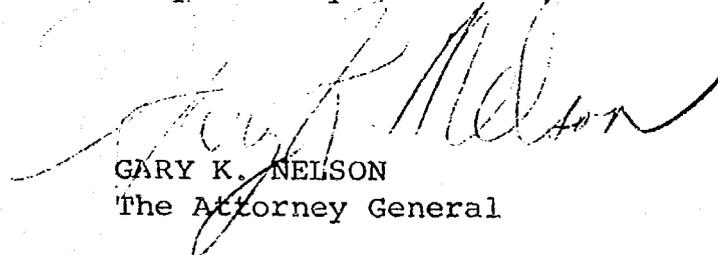
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loco parentis and the above principles apply. This is in accord with the general rule which obtains in most of the United States. 89 A.L.R.2d 396.

Respectfully submitted,



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The Attorney General

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