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October 7, 1955  
Opinion No. 55-202

REQUESTED BY: Steve J. Vukceovich, Superintendent  
Arizona State Industrial School  
Fort Grant, Arizona

OPINION BY: Robert Morrison, The Attorney General  
Melvin J. Mirkin, Assistant Attorney General

QUESTION: Is corporal punishment legal in Arizona in-  
stitutions?

CONCLUSION: Yes.

The superintendent of the State Industrial School is charged with many duties. One of those is providing "for the care of residents of the institution, protection of their health, their instruction in academic subjects and useful trades and occupations, development of their characters, and inculcation of principles of morality, sobriety and industry." Section 47-407(g), ACA, 1939. Therefore, the juveniles who are in the custody of the State Industrial Schools are subject to the care and supervision of the superintendent. Ridgway v. Superior Court of Yavapai County, 74 Ariz. 117, 245 P.2d 268.

The operant statutes concerning corporal punishment are as follows:

Section 43-602, ACA, 1939:

"Use of force justified.--Violence used to the person does not amount to assault or battery in the following cases: 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, the teacher over the scholar;...\*\*\*"

Section 43-3909, ACA, 1939:

"\* \* \* Every officer who is guilty of wilful inhumanity or oppression toward any prisoner under his care or in his custody, or who, under color of authority, without lawful necessity, assaults or beats any person, is punishable by fine not exceeding one thousand dollars (\$1,000), or imprisonment in the county jail not exceeding six (6) months, or by both. (citing statutes)"

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43-602, supra, refers to three certain relationships: that of parent and child, guardian and ward, and teacher and student. Since the child is in the custody of the institution, the institution and its proper officer, i.e., the superintendent, stands in loco parentis to the child. 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 CJS, Parent and Child, Sec. 73, page 805. Dounelley v. Territory, 5 Ariz. 291, 52 Pac. 368. Therefore, the superintendent would be within the protective provisions of Section 43-602, supra, until he commits such an excess as to make him subject to the penal provision of Section 43-3909, supra. See Ridgway v. Superior Court of Yavapai County, supra.

Corporal punishment itself has been construed to mean punishment upon the body, such as whipping, rather than punishment of the body, such as imprisonment. Ex parte Wisner, 92 Pac. 958; Ritchey v. People, 43 Pac. 1026. Furthermore, corporal punishment has been defined as acts done by way of punishment and does not refer to force used to keep order or prevent misconduct by persons confined. People v. McMillan, 114 P.2d 440.

It is, therefore, the opinion of this office that the Superintendent of the Arizona State Industrial School may, when he deems it necessary for the moderate correction of an inmate of the institution, administer corporal punishment, as long as such corporal punishment does not verge on willful inhumanity or oppression.

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