

**Reform School, Expenses of Returning Paroled Children.**

Children paroled from the reform school should be returned to the residence of their parents or guardian, when such residence is in Montana and the expense of returning them is a proper charge against the county from which the child was committed to the school.

Helena, Montana, June 17, 1908.

Rev. D. B. Price, . . . .

Director Montana State Reform School.

Miles City, Montana.

Dear Sir:—

Your letter of the 15th inst. received, in which you ask for an opinion upon the following question:

Are the provisions of Section 3089, Penal Code, mandatory under the following circumstances. The auditor of Cascade county refused to allow a bill for the expense of returning a boy who was committed to the reform school from that county, such refusal being based upon the ground that the boy has no parent or guardian in Cascade county.

Also the auditor of Silver Bow county refused to allow a bill for the expense incurred in returning a boy committed from Silver Bow county, upon the ground that the mother of such boy does not want the boy in Butte.

The latter part of said Section 3089 reads as follows:

“Provided that the expense of committing such boy or girl to the said reform school, of (or?) or the returning of him or her to his or her parents or guardian, after his or her release therefrom, shall be at the expense of the county from which such boy or girl is committed.”

It is apparent from the language of this section that it was the intention of the legislature to make the county from which the boy or girl was committed liable for the expense of returning such boy or girl to his or her parent or guardian. The law does not say that the parent or guardian must be residing in the county from which the boy was committed at the time the child is returned to them. Therefore, it would appear that in the case of the boy committed from Cascade county that the county would be liable for the expense of returning such boy to his guardian or parent: provided that he has a parent or guardian residing in any county in the state of Montana. If his parent or guardian is residing without the state of Montana, we are of the opinion that the reform school in paroling the boy would have no authority to send him to such parent or guardian, for the reason that under Section 3093 it is the duty of the director of the reform school to recall any paroled boy or girl who may not be conducting himself or herself properly. Therefore the director should not allow the boy or girl to go outside of the jurisdiction in which the process of the state extends.

You are therefore advised in relation to the boy from Cascade county that if he has a parent or guardian residing anywhere within the state of Montana, that the boy upon being paroled should be returned to such parent or guardian, and the bill for the expense of returning him presented to Cascade county, as the law is mandatory and says that such expense shall be paid by the county from which he was committed. Of course, if the boy has no parent or guardian residing anywhere within the state, then you would have no authority to send him to any particular county, as the law does not say that he must be returned to the county from which he was committed, but must be returned to his parent or guardian.

As to the boy committed from Silver Bow county, it appears from your letter that his mother is now residing in Silver Bow county. Therefore, you are advised that under the statute the boy should be returned to said county and the bill presented to said county for the expense of so returning him, and it is mandatory upon the county to pay such bill. The fact that his mother does not wish him to return to said county would make no difference, for she is his parent, and therefore, in the absence or death of the father, his legal guardian, unless for some reason a guardian has been appointed by the court.

As such parent she is entitled to the custody of the child and to its services and earnings during minority, and also liable for its support and education during such period. Therefore said Section 3089 clearly implies that he should be returned to such parent or guardian when released from the school. Of course, if the county refuses to pay the bill for the expense incurred in returning the boy, then you would be compelled to institute action against the county to determine its liability for such expenses.

Very truly yours,

ALBERT J. GALEN,

Attorney General.