Reform School, Discharge of Inmate on Habeas Corpus. Reform School, Period of Confinement of Females. Habeas Corpus, as Applied to Reform School Inmates.

The reform school is a school and not a penal institution, and the right to discharge a female over the age of 18 years by writ of habeas corpus does not appear to be authorized by the statutes governing the reform school.

Helena, Montana, January 27, 1910.

Hon. Sharpless Walker,
County Attorney,
Miles City, Montana.

Dear Sir:—

I am in receipt of your letter, containing copy of petition in the matter of the application of Josephine Ashley for a writ of habeas corpus.

It appears from this petition that her discharge is asked upon three grounds: The first ground being that she is now over 18 years of age; the second, that she has never been tried or convicted of any crime or public offense against the laws of the state; the third, that her parent, Mrs. Lula McCleary, was never notified of the proceedings or ordered to appear to show cause why the girl should not be committed to the reform school.

If the petition was based solely upon the first and second grounds, our advice would be to resist the application, and in case of an adverse ruling to take the matter to the supreme court on a writ of supervisory control. We are aware of the fact that the district court has already discharged an inmate on the first ground set out in this petition. We are not, however, satisfied with the correctness of such ruling, and the next time that a petition is filed asking for the discharge of an inmate upon this ground, or on the second ground, we desire that the same be contested and a record made upon which a writ can be asked for from the supreme court.

The state reform school is not a penal institution, but is a school. (See Opinions of Attorney General 1905-06., page 215). And the children of school age are defined in the constitution, article XII, sections 5 and 7, and also section 899, revised statutes, as being all persons between 6 and 21 years of age; and section 9808, revised statutes, expressly provides that whenever the facts are such as to justify the court in sending a boy or girl to this school, that they shall remain there until they arrive at the age of 21 years, unless paroled or legally discharged by the officers of the school.

Therefore, in our opinion, a girl is not entitled to her discharge under such an order until she has reached the age of 21 years. For this reason we desire to have that point settled by the supreme court.

However, under this petition it is alleged that no order was ever issued and served upon the mother of this inmate, requiring her to appear at any time or place to show cause why the girl should not be committed, and it further alleges that the district judge knew at the time of such proceedings that the mother was living at Great Falls, in the state of Montana. If these facts can be established, it is sufficient, in our opinion, to warrant the discharge of the girl.

Therefore, in this case we do not wish to make a test by taking the same to the supreme court, for the reason that the decision might turn upon the insufficiency of this notice and leave the point that we desire settled by the supreme court still undecided.

Therefore, if you are satisfied that the allegations as to the lack of

notice to Mrs. McCleary are true there is no use resisting the application.

Mr. George can produce the girl in court, pursuant to the writ showing his authority for detaining her, and let them put in their proof and secure a discharge. Of course, if they wholly fail in their proof as to the lack of notice to the mother, and she is discharged solely upon the ground that she has reached the age of 18 years, then a writ of supervisory control can be applied for in this case for the purpose of settling that question.

See State ex rel Hepner, v. District Court, 104 Pac. 872.

Very truly yours,

ALBERT J. GALEN,

Attorney General.