

## Opinion No. 64.

**Children—Juvenile Delinquents—  
Commitment.**

HELD: 1. Where juvenile delinquent was returned from the State Industrial School as unmanageable and incorrigible, the court cannot summarily commit him to the state prison.

2. A commitment of such juvenile delinquent to the state prison must be predicated upon conviction of a felony, after filing of information.

May 16, 1939.

Mr. W. L. Fitzsimmons  
Clerk of the Consolidated Boards  
Helena, Montana

My Dear Mr. Fitzsimmons:

You have submitted to this office, the question as to whether or not the district court had jurisdiction to commit a person to the state prison, under the following facts, to-wit:

A person was committed to the state industrial school January 28, 1939, by the district judge, as a juvenile delinquent, to be kept until he reached the age of twenty-one years, unless sooner discharged. On March 6, 1939, said person was returned to the county where he had been committed for the reason that he was incorrigible and unmanageable at said institution. On

May 9, 1939, he was committed to the state prison, to be kept until he reaches the age of twenty-one years, unless sooner legally discharged.

Section 12497 authorizes the court to take other proceedings, and impose such penalty as provided by law for the offense for which the person had been committed, where the person has been returned from the state industrial school as being incorrigible and unmanageable.

Generally felonies are punishable by imprisonment in the state prison, or death, and misdemeanors by fines, or imprisonment in the county jail.

Chapter 1, Vol. 5, R. C. M. 1935;

State ex rel City of Butte v. District Court, 37 Mont. 202.

Conviction of being a juvenile delinquent does not constitute conviction of a (felony or misdemeanor) crime.

State ex rel Palagi v. Freeman, et al., 81 Mont. 132;

State v. Ludwick, 90 Mont. 41.

Such conviction authorizes commitment to the state industrial school (Chapter 106, Vol. 5, R. C. M., 1935), but not to the county jail or state prison. If the person is committed to the state prison, after being returned from the state industrial school, under Section 12497, he must be committed after conviction following the filing of an information charging a felony, contained in said juvenile petition. If a misdemeanor, the person may be committed to the county jail. Such proceedings, under an information or complaint, are separate and independent from the juvenile proceedings.

To summarily commit said person to the state prison without conviction, upon an information charging a felony, contravenes Section 28, Article III of the Constitution prohibiting imprisonment, except as punishment for a crime.

Under the facts as submitted, the district judge in committing said person to the state prison acted in excess of jurisdiction, and said commitment is void.