WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

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FILE NO. S-910

CHILDREN:
Juvenile Court Act;
Detention Facilities

Miss Naomi Hiett
Executive Director
Commission on Children
3 West Old State Capitol Plaza
Room 206
Springfield, Illinois 62701

Dear Director Hiett:

This responds to your letter requesting my opinion as to whether section 2-8 of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 702-8)[hereinafter the Act] which provides:

> "§ 2-8. Confinement, Fingerprints, Photographs and Arrest Information.) (1) No minor under 16 years of age may be confined in a jail or place ordinarily used for the confinement of prisoners in a police station. Minors under 17 years of age must be kept separate from confined

> adults and may not at any time be kept in the same cell, room, or yard with adults confined pursuant to the criminal law.
>
> (2) No law enforcement officer or other person or agency may knowingly transmit to the Department of Corrections, Adult Division or the Department of Law Enforcement or to the Federal Bureau of Investigation any fingerprint or photograph relating to a minor who has been arrested or taken into custody before his 17th birthday, unless the court in proceedings under this Act authorizes the transmission or enters an order under Section 2-7 permitting the institution of criminal proceedings.
>
> (3) The records of law enforcement officers concerning all minors under 17 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court or when the institution of criminal proceedings has been permitted under Section 2-7 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation."

may be applied in answering the following four questions:

> 1. Can children under 16 years of age be confined in a jail or police station if they are in a separate wing from adults?
>
> 2. Can minors of 16 to 17 years of age be confined with adults or permitted to share the same meal or recreation facilities?

3. Can law enforcement officers place a child under 16 in a cell or a lockup in a jail or police station while they are trying to locate parents or awaiting transportation of the child to his home?

4. Can a multi-purpose municipal or county building which includes a police station or county jail also include a juvenile detention center on a different floor or section of the building but administered by the sheriff or police official which administers the police department or county jail?

In answering your questions reference must be made to both the clear and compelling language of section 2-8 of the Act and the long and well established history of application of special juvenile court provisions in Illinois. While each of your questions raises a different factual situation, all involve common determinations of policy goals sought to be achieved by the Act as well as common problems of statutory construction. For this reason, I shall, prior to answering each of your specific questions, lay a proper foundation for discussion by detailing the development of theories of "juvenile justice" in Illinois as reflected in the evolution of special legal provisions over the past 75 years.

Illinois, a progressive State, has always been a forerunner in the area of juvenile justice and reform. In an early case construing the provisions of the old Juvenile Court Act, (Lindsay v. Lindsay, 257 Ill. 328), the Supreme Court stated:

> "This Act was originally adopted in 1899, and is said by the editor, of the 11th and latest edition of Whartons Criminal Law to be the first juvenile court act, as such acts are generally known, adopted by any State. * * * Our statute and those of a similar character treat children coming within their provisions as wards of the State to be protected rather than as criminals to be punished and their purpose is to save them from the possible effect of delinquency and neglect liable to result in their leading a criminal career. The purpose of such legislation is, we think, rightfully claimed to be unquestionably in advance of previous legislation dealing with children as criminals." (at p. 333.)

Similarly, in the case of In Re Johnson v. Johnson, 30 Ill. App. 2d 439, the Appellate Court in declining to declare delinquent two boys who had damaged an unoccupied house which they had adopted as their clubhouse, stated:

> "This [punishment of petty offenses] is not the purpose of the statute. As long ago as 1903 the then existing statute concerning delinquent children was construed as having the objective of providing care, not punish-

> ment, to prevent boys from becoming criminals, not to punish them as such. City of Chicago v. City of Cook, 106 Ill. App. 47." (at p. 444.)

In a more recent case, The People v. Hackman, 1 Ill. App. 3d 1030, involving a petition for revocation of probation of a minor for leaving home and not returning before a 10:00 curfew, the Appellate Court in denying the petition stated:

> "The purpose and policy of the Juvenile Court Act is to secure for each minor care and guidance, preferably that will secure his welfare and best interests of the community and to remove him from custody of his parents only when his welfare or safety cannot be adequately safe-guarded without such removal." (at p. 1032.)

In effectuating the above mentioned legislative and judicial directives, section 1-2 of the present Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 701-2) provides:

> "§ 1-2. Purpose and policy.) (1) The purpose of this Act is to secure for each minor subject hereto such care and guidance, preferably in his own home, as will serve the moral, emotional, mental, and physical welfare of the minor and the best interests of the community; to preserve and strengthen the minor's family ties whenever possible, removing him from the custody of his parents only when his welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, when the minor

is removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should be given by his parents, and in cases where it should and can properly be done to place the minor in a family home so that he may become a member of the family by legal adoption or otherwise.

(2) In all proceedings under this Act the court may direct the course thereof so as promptly to ascertain the jurisdictional facts and fully to gather information bearing upon the current condition and future welfare of persons subject to this Act. This Act shall be administered in a spirit of humane concern, not only for the rights of the parties, but also for the fears and the limits of understanding of all who appear before the court.

(3) In all procedures under this Act, the following shall apply:

a) The procedural rights assured to the minor shall be the rights of adults unless specifically precluded by laws which enhance the protection of such minors.

b) Every child has a right to services necessary to his proper development, including health, education and social services.

c) The parents' right to the custody of their child shall not prevail when the court determines that it is contrary to the best interests of the child.

(4) This Act shall be liberally construed to carry out the foregoing purpose and policy." (emphasis added.)

It seems clear from the above cited materials that the special provisions of the Act are designed primarily to protect and not to punish minors subject to its jurisdiction. In evaluat-

ing a suggested system of disposition, therefore, an inquiry must be directed toward determining the effect of such a system of disposition upon minors affected. To be acceptable within the provisions of the Act, a system must be designed to provide custody, care and discipline as nearly as possible equivalent to that provided in a home. The touchstone of acceptability is, therefore, that a system of disposition be designed to help and not punish juvenile offenders.

Proceeding to your first specific question, it is my opinion that children under 16 years of age may not be confined in a jail or in a police station "lockup" but may be confined in a place in a police station not ordinarily used for confinement of adults. This determination follows from the plain and ordinary language of section 2-8, itself, as read in accordance with the ordinary rules of statutory construction. In construing Illinois statutes, words should be given their ordinary, plain and commonly accepted meaning. (Lincoln Nat'l. Life Ins. Co. v.

McCarthy, 10 Ill. 2d 489.) The legislature is considered to have intended what it has plainly expressed and when words have a definite meaning it is not allowable to go beyond the statute and change the meaning. (Chicago Home For Girls v. Carr, 300 Ill. 478; Carroll v. Rogers, 330 Ill. App. 114.) The language of section 2-8 of the Act is clear in its prohibition of confinement of minors under 16 in jails. The prohibition by the section against confinement of such minors in places in police stations ordinarily used for adult prisoners is equally clear. The only area of question, therefore, concerns confinement of such minors in places in police stations not ordinarily used for confinement of prisoners. While under the former Family Court Act (Ill. Rev. Stat. 1965, ch. 23, par. 2022) a child could not be confined in the same building as adult convicts, this provision has not been carried over into the Act as presently in force. The applicable standard is no longer determined by reference to whether minors are confined in the same building but whether they are effectively isolated from adults. It is my conclusion, there-

fore, that to be appropriate under the provisions of section 2-8 of the Act any confinement of minors must insure complete and effective isolation of such minors from any contact with adult prisoners while at the same time not be of such a nature as to subject said minors to severe punitive conditions. In short, a detention facility should conform to the standards specifically prescribed by section 2 of "AN ACT to provide for the temporary care and custody of dependent, delinquent or truant children and to levy a tax for that purpose" (Ill. Rev. Stat. 1973, ch. 23, par. 2682) which states:

> "§ 2. Such detention home shall be so arranged, furnished and conducted, that, as near as practicable for their safe custody, the inmates thereof shall be cared for as in a family home and public school. To this end the employees provided for and selected to control and manage such home shall consist of a discreet woman of good moral character or a man and woman of good moral character, who shall be respectively designated as 'superintendent' and 'matron' of the detention home, and shall reside therein, and at least one of whom shall be competent to teach and instruct children in branches of education similar to those embraced in the curriculum of the public schools of the county

> up to and including the eighth grade, and such help or assistance as in the opinion of the county commissioners, or board of supervisors, as the case may be, shall deem necessary to the proper care and maintenance of such home. Such home shall be supplied with all necessary and convenient facilities for the care of the inmates as herein provided."

The rehabilitative goals of our system of juvenile justice in Illinois must at all times receive central consideration. If this type of confinement can be implemented by the adding of a "wing" onto a police station then confinement of minors under 16 in a separate "wing" will comply with the provisions of section 2-8 of the Act. It is to be noted however, that relevant policy objectives demand that such facilities not correspond in nature to those of a jail. In determining what type of facilities are mandated, reference should be made to the important policy goals of the Act as noted hereinabove.

In response to your second question, it is clear from the language of section 2-8 of the Act that minors of 16 to 17 years of age may not be confined with adults or permitted to share the same meal or recreation facilities with adult prisoners. This determination follows from the clear language of the statute itself as well as from the basic policy of the

Act favoring complete segregation of minors in seeking to rehabilitate rather than to punish. Minors are not at any time to be kept in the same cell, room, or yard with adult prisoners. As my predecessor noted in his opinion No. F-1534 of February 17, 1966:

> "The statute is designed to separate the youthful offender from the older hardened and more experienced person whose anti-social behaviour has extended beyond adolescence into adult life. The obvious legislative intent was to see that the juvenile offender was not provided with an instructor in the methods of crime. As this is a statutory section which is designed for the protection of the youthful offender, it must be given the mandatory construction which such statutes require. [See 34 I.L.P. Statutes, sec. 136]" (1968 Op. Atty. Gen. 63.)

From the above cited materials, it is my conclusion that the answer to your second question must be in the negative. Minors of 16 to 17 years of age may not be confined with adults or permitted to share meal or recreation facilities with adult prisoners.

In response to your third question concerning placement of children under 16 in a lockup in a jail or police station

while trying to locate the child's parents, the answer to your question is again in the negative. Such a disposition is clearly prohibited by section 2-8 and by the policy objectives which the section was designed to achieve. It would be in keeping with the spirit of section 1-2 of the Act, as cited hereinabove, for law enforcement officers to temporarily detain a child in order to reunite him with his parents. Detention of a child in a jail cell or police station lockup, however, presents a different question and is in contravention of the express language of section 2-8 as well as contrary to the major policy goals which the Act is designed to achieve.

Finally, in relation to your fourth question, it is my opinion that a juvenile detention center may be maintained in a multipurpose municipal or county building which includes a police station or county jail so long as juveniles detained in the center are completely and effectively isolated from adult prisoners and so long as the detention center is

administered in accordance with the administrative and policy directives embodied in the relevant sections of the Act. This opinion, however, should not be read as a broad authorization empowering sheriffs or police officials to redesignate jail facilities as juvenile detention centers. Such a redesignation would be contrary to the policy directives of the Act and legally impermissible. In seeking to protect and not to punish juveniles, the provisions of the Act will be liberally construed.

Very truly yours,

A T T O R N E Y G E N E R A L