



STEVE CLARK
ATTORNEY GENERAL

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-41
~~February 13, 1985~~

Mr. Kim M. Smith
Prosecuting Attorney
Washington County Courthouse Annex
Fayetteville, AR 72701-6192

RE: Juvenile in need of supervision/incarceration for
contempt of court

Dear Mr. Smith:

You have requested an opinion of this office regarding the authority of the juvenile referee to jail a juvenile in need of supervision (JINS) for contempt of court for failure to attend school as ordered. Pursuant to the juvenile code and a prior opinion of this office, the juvenile court cannot jail a juvenile under these circumstances.

You have correctly labeled the juvenile as one in need of supervision as defined in Ark. Stat. Ann. §45-403(3)(a) (Repl. 1977), and §45-603(3)(a) (Repl. 1977), because the original offense was failure to attend school. The disposition alternatives for a JINS are found in Ark. Stat. Ann. §45-436(3)(a)(i-v) (Cum. Supp. 1983). None of these provides for a jail term.

I refer you now to the former opinion issued by this office which I have enclosed. Even though that letter addresses questions of commitment to the Division of Youth Services, the discussion is equally applicable to the issue of jail incarceration. In essence the opinion stated that once a juvenile is adjudicated to be a JINS, failure to obey the Court's order does not change his status. Therefore, he must still be dealt with as the Code provides for JINS.

Note also that under §45-436(4)(e), if a juvenile violates his probation, the Court can only order "any other disposition that would have been appropriate in the original disposition of the case." As discussed above since the JINS

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could not have received a jail sentence initially, the court could not impose one for failure to obey the original JINS order.

The foregoing opinion which I hereby approve, was prepared by Assistant Attorney General Elizabeth Dowling.

Sincerely,


STEVE CLARK
Attorney General

jsc:ED:dc

Enclosure