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OPINION	:	No. 80-208
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of	:	<u>May 8, 1980</u>
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SUBJECT: JUVENILE HALLS—Each California county is required to operate its own juvenile hall, either solely or jointly with another county, but a county may not contract with another county for the use of its county jail for the secure detention of minors. A California county may not place minors described in section 602 of the Welfare and Institutions Code in out-of-state juvenile halls pending adjudication and disposition hearings in California.

The Honorable Pearl S. West, Director, Department of the Youth Authority, has requested an opinion on the following questions:

1. Is each California county required to operate its own juvenile hall, either solely or jointly with another county, or may a county contract with another county for the use of its county jail for the secure detention of minors?
2. May a California county place minors described in section 602 of the Welfare and Institutions Code in out-of-state juvenile halls pending adjudication and disposition hearings in California?

CONCLUSIONS

1. Each California county is required to operate its own juvenile hall, either solely or jointly with another county. A county may not contract with another county for the use of its county jail for the secure detention of minors.

2. A California county may not place minors described in section 602 of the Welfare and Institutions Code in out-of-state juvenile halls pending adjudication and disposition hearings in California.

ANALYSIS

Dividing the initial inquiry into two parts, we first consider whether a county is required to operate its own juvenile hall, either solely or jointly with another county. Section 850 of the Welfare and Institutions Code¹ provides:

“The board of supervisors in every county shall provide and maintain, at the expense of the county, in a location approved by the judge of the juvenile court or in counties having more than one judge of the juvenile court, by the presiding judge of the juvenile court, a suitable house or place for the detention of wards and dependent children of the juvenile court and of persons alleged to come within the jurisdiction of the juvenile court. Such house or place shall be known as the ‘juvenile hall’ of the county. Wherever, in any provision of law, reference is made to detention homes for juveniles, such reference shall be deemed and construed to refer to the juvenile halls provided for in this article.”

Section 870 provides:

“Two or more counties may, pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, establish and operate a joint juvenile hall. A joint juvenile hall shall be under the management and control of the probation officers of the participating counties, acting jointly, or of one of such probation officers, as provided by the agreement among the counties, and shall be in the charge of a superintendent selected pursuant to a civil service or merit system. A joint juvenile hall shall be operated in the manner prescribed by this chapter for juvenile halls.

¹ Hereinafter, all section references are to the Welfare and Institutions Code unless otherwise indicated.

“A county participating in the maintenance of a joint juvenile hall pursuant to this section need not maintain a separate juvenile hall.”

Sections 850 and 870 were added in their present form by the Statutes of 1961, chapter 1616, section 2, as part of the Juvenile Court Law. These two sections provide unequivocally that every county shall provide and maintain, either separately or jointly under the provisions commencing with section 6500 of the Government Code, a juvenile bail. Section 872, added as an urgency statute by the Statutes of 1976, chapter 399, section 1, does not provide so the contrary:

“Where there is no juvenile hall in the county of residence of minors, or when the juvenile hall becomes unfit or unsafe for detention of minors, the presiding or sole juvenile court judge may, with the recommendation of the probation officer of the sending county and the consent of the probation officer of the receiving county, by written order filed with the county clerk, designate the juvenile hall of any county in the state for the detention of an individual minor for not so exceed 60 days. The court may at any time modify or vacate such order and shall require notice of the transfer to be given to the parent or guardian. The county of residence of a minor so transferred shall reimburse the receiving county for costs and liability as agreed upon by the two counties in connection with such order.

“The Department of the Youth Authority shall establish a maximum population limit for each juvenile hall in this state.

“As used in this section, the terms ‘unfit’ and ‘unsafe’ shall include a condition in which a juvenile hall is considered by the juvenile court judge, the probation officer of that county, or the Department of the Youth Authority to be too crowded for the proper and safe detention of minors.”

While the latter provision contemplates the possibility that there may not be a juvenile hall² “in the county of residence” of a minor,³ it does not, either expressly or by implication, contraindicate the mandate of sections 850 and 870 that every county shall provide and maintain such a facility. It cannot be determined that a later statute has repealed by

² We are advised that at least two counties do not provide and maintain, either separately or jointly with another county, a juvenile hall.

³ Section 850 does not require that a juvenile hall separately maintained by a county be located within the county. We express no opinion regarding the application of section 872 where the juvenile hall, whether separately or jointly maintained, is not located “in the county of residence” of a minor.

implication a former one unless they are irreconcilable, clearly repugnant, and so inconsistent that they cannot have concurrent operation. (*Orange County Air Pollution Control District v. Public Utilities Commission* (1971) 4 Cal. 3d 945, 954; 61 Ops. Cal. Atty. Gen. 424, 433 (1978).) The mere recognition by the Legislature that one or more counties, due to fiscal or other intervening constraints, do not have a juvenile hall, is not inherently or logically inconsistent with the underlying statutory mandate.

We next consider whether a county may contract with another county for the use of its county jail for the secure detention of minors. Section 207, subdivision (a) provides:

“No court, judge, referee, or peace officer shall knowingly detain in any jail or lockup any person under the age of 18 years, unless a judge of the juvenile court shall determine that there are no other proper and adequate facilities for the care and detention of such person, or unless such person has been transferred by the juvenile court to another court for proceedings not under the Juvenile Court Law and has been charged with or convicted of a felony. If any person under the age of 18 years is transferred by the juvenile court to another court and is charged with or convicted of a felony as herein provided and is not released pending hearing, such person may be committed to the care and custody of a sheriff, constable, or other peace officer who shall keep such person in the juvenile hall or in such other suitable place as such latter court may direct, provided that no such person shall be detained in or committed to any hospital except for medical or other remedial care and treatment or observation.”

While the prohibition is not absolute, it is clear that the detention of a minor in a jail is contrary to the legislative purpose underlying both sections 207 and 850 that minors be housed apart from adult offenders. (*Cf.* 6 Ops. Cal. Atty. Gen. 253 (1945).) This purpose is consistent with the principle that a proceeding in the juvenile court shall not be deemed a criminal proceeding. (§ 203.) In furtherance of this policy, section 850 requires that every county provide and maintain a juvenile hall for the detention of minors. In this regard, section 851 further provides:

“The juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be nor be treated as a penal institution. It shall be conducted in all respects as nearly like a home as possible.”

Moreover, a juvenile hall must be managed and controlled by the probation officer who is responsible for the appointment of a superintendent to have charge thereof, and of such other employees as may be needed for its efficient operation. (§§ 852, 853, 854.)

In view of the legislative purpose indicated by the cited provisions, section 636 providing that a court may, in certain cases, order that a minor be detained in the juvenile hall or “other suitable place designated by the juvenile court” may not be interpreted as authority to designate a county jail except as provided under section 207. Nor does section 207 constitute authority for the detention of minors generally in a county jail. In our view, the use of a county jail for such purposes is inconsistent with the requirement that a county provide and maintain a juvenile hall which shall be neither in nor connected with any jail, and managed and controlled by others than the sheriff and his deputies, and with section 872 authorizing the court to designate, in the absence of a juvenile hall in the county of residence or when the juvenile hall becomes unfit or unsafe for, detention of minors, a juvenile hall of any county of the state. It is concluded that a county may not contract with another county for the use of its county jail for the secure detention of minors.

The second inquiry is whether a county may place minors described in section 602⁴ in out-of-state juvenile halls pending adjudication and disposition hearings in California. As previously set forth, section 850 requires that every county provide and maintain a juvenile hall. In the alternative, section 870 provides that two or more *counties* may establish and operate a joint juvenile hall. Section 872 provides that in the absence of a juvenile hall or when a juvenile hall becomes unfit or unsafe for the detention of minors, the court may designate the juvenile hall of *any county in the state* for the detention of an individual minor.

Moreover, section 209 provides:

“The judge of the juvenile court of a county, or, if there is more than one such judge, any of the judges of the juvenile court shall, at least annually, inspect any jail, juvenile hall, or lockup which in the preceding calendar year was used for confinement for more than 24 hours of any minor. Such judge shall note in the minutes of the court whether the jail, juvenile hall, or lockup is a suitable place for confinement of minors.

“The Department of the Youth Authority shall likewise conduct an annual inspection of each jail, juvenile hall, or lockup situated in this state which, during the preceding calendar year, was used for confinement for more than 24 hours of any minor.

⁴ Section 602 provides:

“Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime, other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.”

“If either such judge of the juvenile court or the department, after inspection of a jail, juvenile hall, or lockup, finds that it is not being operated and maintained as a suitable place for confinement of minors, the juvenile court or the department shall give notice of its finding to all persons having authority to confine, such minors pursuant to this chapter and commencing 60 days thereafter such jail, juvenile hall, or lockup shall not be used for confinement of such minors until such time as the judge or department, as the case may be, finds, after reinspection of the jail, juvenile hall, or lockup, that the conditions which rendered the facility unsuitable have been remedied, and such facility is a suitable place for confinement of such minors.

“The custodian of each jail, juvenile hall, and lockup shall make such reports as may be required by the department or the juvenile court to effectuate the purposes of this section.”

Section 210 provides that the Youth Authority shall adopt minimum standards for the operation and maintenance of juvenile halls for the confinement of minors. Section 209 prescribes certain official duties of a judge of a county in which a minor was detained for a specified period, and of a custodian of any such detention facility. Sections 209 and 210 are based on the assumption that a juvenile hall in which a minor was detained pursuant to the laws and authority of this state is subject to the jurisdiction of the Department of the Youth Authority. Neither an officer of another state nor a public facility located without this state is subject to the statutory prerequisites of this state. Nothing in the Juvenile Court Law indicates an intention by the Legislature to authorize the detention of minors in out-of-state juvenile halls pending adjudication and disposition hearings or otherwise.
