January 14, 1976

ATTORNEY GENERAL OPINION NO. 76-15

Mr. Phillip E. Winter  
Assistant County Attorney  
Lyon County Courthouse  
Emporia, Kansas 66801

RE: Infants - Juvenile Code - Jurisdiction of the Juvenile Court Over Married Persons Under the Age of Eighteen Years.

SYNOPSIS: The amenability of a person under the age of eighteen (18) years to the Kansas Juvenile Code remains unaffected by the marriage of such person.

* * *

Dear Mr. Winter:

Due to the change enacted in 1972 of K.S.A. 38-101, you have asked whether the amenability to the Kansas Juvenile Code, K.S.A. 38-801 et seq., of a person under the age of eighteen (18) years is affected by the marriage of such person.

The present statute, 38-101 provides: "The period of minority extends in males and females to the age of eighteen (18) years."

Prior to amendment the provisions of that statute were as follows:

"The period of minority extends in males and females to the age of twenty-one (21) years: Provided, That every person eighteen (18) years of age or over who is or has
been married, shall be considered of the
age of majority in all matters relating
to contracts, property rights and lia-
bilities, and the capacity to sue and
be sued. (L. 1965, Ch. 274 §1).

Also, K.S.A. 38-802(b),(c),(d) and (g) define the terms
delinquent child, miscreant child, wayward child and dependent
and neglected child. Each of these definitions includes as
one of its essential elements the requirement that the child
be less than eighteen (18) years of age. There is no mention
of marital status in these definitions.

The effect of marriage upon the status of a person less
than eighteen (18) years of age is that it emancipates such
person. While emancipation by marriage affects the parents'
rights and obligations with respect to the infant, such eman-
cipation does not otherwise remove the incapacity of his minority.
Emancipation does not by itself operate to make the minor sui
juris. 42 Am.Jr.2d, Infants §3.

The general rule with respect to the state's treatment
of such persons is that the guardianship of the state over
children provided by statutes relating to delinquent children
is paramount to any rights which may be acquired by the child
through marriage. 14 A.L.R.2d 336, Annot. Accordingly, a
juvenile act applicable to persons under eighteen (18) applies
to such person despite the fact that she is married. 47 Am.Jur.2d,
Juvenile Courts, Etc. §28.

The Montana Court, dealing with facts and statutes strikingly
similar to the ones you have presented, held that a married girl
under the age of eighteen (18) years could be a juvenile delin-
quent. The court said the statute providing that any child
under the age of eighteen (18) years found in specified situa-
tions "shall be deemed a delinquent child or a juvenile delin-
quent person," indicated a purpose to include within the purview of
the statute all persons under eighteen (18) years of age whether
married or not, and that the child's marriage did not change
its status from that of minor to adult, within the meaning of
statutes defining those terms, unless some statute expressly
so provided. State ex rel. Foot v. District Court, 77 Mont. 290,
250 P. 973, 49 A.L.R. 398.

The Kansas Court, although not dealing with the amenability
of a child to the Juvenile Code, observed that in view of G.S.
1949, 38-101, a child seventeen (17) years of age is still a
minor, even though married. Ortiz v. Ortiz, 180 Kan. 334, 336,
304 P.2d 490 (1956).
Mr. Phillip E. Winter
January 14, 1976
Page Three

Therefore, it is my opinion, based upon the weight of authority that the amenability of a person under the age of eighteen (18) years to the provisions of the Juvenile Code remains unaffected by the marriage of such person.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS:JAW:en