STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 12, 1976

ATTORNEY GENERAL OPINION NO. 76- 257

Mr. Don Vsetecka
Finney County Attorney
108 West Pine Street
Garden City, Kansas 67846

Re: Infants--Juvenile Code--Detention

Synopsis: In making a determination whether a juvenile is "dangerous to himself or to others," a finding that, if released, the juvenile may commit acts which entail a reasonably foreseeable likelihood of physical harm to the person of the juvenile or of another, would support detention under K.S.A. 1975 Supp. 38-815e(1).

A juvenile may be placed in the custody of any institution or person enumerated in K.S.A. 38-826 pending final disposition with the qualification that no juvenile under sixteen (16) years of age shall be placed in a county jail and no juvenile under thirteen (13) years of age shall be placed in a youth center or other training or rehabilitation facility for juveniles.

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Dear Mr. Vsetecka:

We have received your request for an opinion as to: (1) Whether the phrase, "The child is dangerous to himself or others" in

K.S.A. 1975 Supp. 38-815b(c)(1) may be interpreted to include a danger to the property of others as a reason for detaining the juvenile, and (2) whether K.S.A. 38-826 provides for the detaining of a juvenile under sixteen (16) years of age after a finding of delinquency or miscreancy has been made but pending placement in an institution or home.

Under K.S.A. 1975 Supp. 38-815(e), whenever a child under the age of 18 years is taken into custody by a peace officer, and thereafter referred to the juvenile court, the child

> "shall not remain in any detention or custody, other than the custody of the parent, guardian or other person having legal custody of the child, for more than forty-eight (48) hours, excluding Sundays and legal holidays, from the time the initial custody was imposed by a peace officer, unless a determination is made, within such forty-eight (48) hour period, as to the necessity for any further detention or custody in a detention hearing as provided in section 4 [38-815b] of this act."

Under K.S.A. 1975 Supp. 38-815b(c), temporary custody or detention may be ordered by the court after determination in a detention hearing that:

> "(1) The child is dangerous to himself or to others; (2) the child is not likely to appear at a hearing for adjudication on any petition filed pursuant to K.S.A. 38-816; or (3) the health or welfare of the child may be endangered without further care."

You question whether, in considering the likelihood that the child is "dangerous to himself or to others," the court may take into consideration the likelihood not only of physical danger to the child or to other persons, but also danger to the property of others. For example, in the instance of a minor who has committed a series of burglaries and who states that he will continue to do so if released, the question is whether such a prospect suggests that the minor may be deemed "dangerous to himself or to others." Stated otherwise, you ask whether, if there is no other effective means of preventing a minor from continuing to commit acts which are prohibited by the Kansas criminal code, detention is authorized on the ground of potential danger, although the threatened acts do not entail threat of physical harm to any person.

K.S.A. 1975 Supp. 38-815b(c) does not authorize merely preventive detention, i.e., detention for the sole purpose of preventing the minor from committing future offenses. Preventive detention, as thus defined, is a distinct ground from that of detention for the specific purpose of preventing the minor from the commission of acts which are dangerous to himself or to other persons. If the threatened acts entail only the threat of danger to or loss of property, as distinguished from a threat of danger to persons, the necessary showing has not been made, in my judgment, to support detention under K.S.A. 1975 Supp. 38-815b(c). Obviously, however, the court may find, due to the nature of the past or threatened offenses, or due to other circumstances in the case, that the acts which the minor threatens to commit could reasonably be anticipated to entail some significant risk of harm to the minor or to some other person as to warrant detention. However, stated abstractly, a finding of threat of harm to the property of another is not tantamount to a finding of harm to another person, and in my judgment, it is the latter finding which is required to be made, supported by substantial evidence, to authorize detention under the cited provision.

From K.S.A. 38-819, it is clear that prior to or during the pendency of a hearing on a petition to declare a child to be delinquent, miscreant, wayward, a traffic offender, a truant or dependent and neglected, the child may be detained in a county jail with separate quarters for juveniles, in accordance with K.S.A. 38-815(b).

However, K.S.A. 38-826 provides:

> "(a) When a child has been adjudged to be a delinquent child or a miscreant child under the provisions of this act, the judge of the district court may make an order to:
>
> (1) Place such child on probation in the care, custody and control of either or both parents . . .
>
> (2) place such child in the care, custody and control of a duly appointed juvenile probation officer . . .
>
> (3) place such child in a detention home, parental home or farm, . . .
>
> (4) place such child in the care of a children's aid society . . .

> (5) place such child, if sixteen (16) years of age or over in the county jail pending final disposition . . .
>
> (6) commit such child to the state secretary of social and rehabilitation services, . . . or
>
> (7) commit such child, if a boy thirteen (13) years of age or older, to the youth center at Topeka or other training or rehabilitation facility for juveniles or, if a girl thirteen (13) years or older, to the youth center at Beloit or other training or rehabilitation facility for juveniles."

A juvenile, pending placement in an institution or home, may be detained or placed in the custody of any institution or person enumerated above, except that a child less than sixteen (16) years of age may not be placed in a county jail nor may a child less than thirteen (13) years of age be placed in a youth center or other training or rehabilitation facility for juveniles.

It is therefore my opinion that a minor under sixteen (16) years of age who has been adjudicated delinquent or miscreant may not be detained in the county jail pending placement in an institution or home.

Yours very truly,

Curt T. Schneider

CURT T. SCHNEIDER
Attorney General

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