



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 1, 1977

ATTORNEY GENERAL OPINION NO. 77- 288

Mr. Dennis W. Moore
District Attorney
Johnson County Courthouse
P. O. Box 728, 6th Floor Tower
Olathe, Kansas 66061

Re: Juvenile Offenders--Traffic Offenders--Jurisdiction

Synopsis: A person who is 16 or 17 years of age may not be charged in municipal court for violation of a municipal ordinance which prescribes the offenses of driving while intoxicated or vehicular homicide, as defined by K.S.A. 1976 Supp. 8-1567 and K.S.A. 21-3405, respectively, for such persons are liable to be proceeded against as miscreant children as defined by K.S.A. 1976 Supp. 38-803(c).

* * *

Dear Mr. Moore:

You inquire whether persons sixteen and seventeen years of age may be prosecuted in municipal court for violations of municipal ordinances prescribing the offenses of driving under the influence of intoxicating drugs or liquor and vehicular homicide, which are prohibited by state law, K.S.A. 21-3405 and K.S.A. 1976 Supp. 8-1567, respectively.

For the purposes of the Kansas juvenile code, K.S.A. 1976 Supp. 38-802(e) defines the term "traffic offender" to mean

"a child under sixteen (16) years of age who does an act which, if done by

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a person sixteen (16) years of age or over, would make such person liable to be arrested and prosecuted for the violation of:

(1) Any statute relating to the regulation of traffic on the roads, highways, or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind except violations of K.S.A. 21-3405 and K.S.A. 1976 Supp. 8-1567; or

(2) any ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state which relates to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind."

By definition, a "traffic offender" for the purposes of the juvenile code includes only persons under sixteen years of age. Thus, it appears that a person sixteen or seventeen years of age cannot be proceeded against in juvenile court as a traffic offender for any traffic offense. Subsection (c) of this statute defines a "miscreant child" as a child less than eighteen years of age

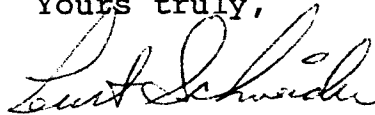
"(1) Who does an act, other than one defined in subsection (e) of this section, which if done by a person eighteen (18) years of age or over, would make such person liable to be arrested and prosecuted for the commission of a misdemeanor as defined by K.S.A. 21-3105

(2) who does an act, other than one defined by subsection (e) of this section, which if done by a person eighteen (18) years of age or over, would make such person liable to be arrested or prosecuted for the violation of any ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state"

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As defined by K.S.A. 21-3405 and K.S.A. 1976 Supp. 8-1567, driving while intoxicated and vehicular homicide are misdemeanor offenses. Because a person who is 16 or 17 years of age who is charged with a violation of either of those provisions is not a "traffic offender," as defined by K.S.A. 1976 Supp. 38-802(e)(1), that person is amenable to the jurisdiction of the juvenile court as a miscreant under K.S.A. 1976 Supp. 38-802(c)(1). If a person 16 or 17 years of age is charged with an equivalent offense which is defined by municipal ordinance, for example, that person is also amendable to the jurisdiction of the juvenile court as a miscreant under K.S.A. 1976 Supp. 38-802(c)(12). Thus, in my judgment, a person who is 16 or 17 years of age may not be charged in municipal court for violation of a municipal ordinance which prescribes the offenses of driving while intoxicated or vehicular homicide, as defined by K.S.A. 1976 Supp. 8-1567 or K.S.A. 21-3405, respectively.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj

Opinion No. 71-38-10

February 3, 1971

ATTORNEY GENERAL'S OPINION

Re: Courts, Juvenile Courts, Traffic Offenders,
K.S.A. 1970 Supp. 38-802(e).

Request By: Robert S. Wunsch, Kingman County Attorney,
Kingman, Kansas.

Question: Is Juvenile Court the proper court to bring
charges of DWI and Reckless Driving against
those under eighteen (18) years of age?

Answer: Yes.

K.S.A. 1970 Supp. 38-802(e) provides:

(e) "Traffic offender" means a child under sixteen (16)
years of age who does an act which, if done by a
person sixteen (16) years of age or over, would
make him liable to be arrested and prosecuted for
the violation of:

(1) Any statute relating to the regulation of
traffic on the roads, highways or streets,
or of the operation of self-propelled or

nonselved-propelled vehicles of any kind except violations under K.S.A. 8-530 and 8-531 and K.S.A. 1969 Supp. 21-3403; or

- (2) any ordinance, police regulation, order, rule or regulation adopted by any authority, city, county, township or other political subdivision of this state which relates to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonself-propelled vehicles of any kind.

It is the opinion of this office that the above mentioned statute grants jurisdiction to the juvenile court over those traffic offenders who are under sixteen years of age, and further grants jurisdiction to the juvenile court over those traffic offenders who are sixteen and seventeen years of age who are in violation of K.S.A. 8-530, 8-531, and 21-3405. K.S.A. 8-530 deals with persons driving while under the influence of intoxicating liquor, and K.S.A. 8-531 covers reckless driving.

Therefore, juvenile court would be the proper court to bring the charge of driving while intoxicated and the charge of reckless driving against those traffic offenders under eighteen years of age.

Traffic violators sixteen years of age and older who are in violation of the traffic laws other than K.S.A. 8-530, 8-531, and 21-3405, are within the jurisdiction of the traffic courts.

VERN MILLER
Attorney General

JNW:sm