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ATTORNEY GENERAL OPINION NO. 89- 147

Otis W. Morrow
City Attorney
P.O. Box 1146
Arkansas City, Kansas 67005

Re: Automobiles and Other Vehicles--Uniform Act
Regulating Traffic; Parties, Arrests, Citations,
Procedures and Penalties; Penalties--Prosecution of
Juvenile Traffic Offenders

Minors--Kansas Juvenile Offenders Code--Definitions

Synopsis: Based on the 1986 amendment to K.S.A. 8-2117, the
Court of Appeals opinion in In re Hockenbury
and section 3.06 of the Kansas Municipal Court
Manual, it is our opinion that a municipal court
has the authority to hear prosecutions of persons
16 and 17 years of age for violations of municipal
ordinances prohibiting the acts prohibited by
K.S.A. 1988 Supp. 8-1567. Attorney General Opinion
No. 77-228, due to changes in the applicable
statutes, is hereby withdrawn. Cited herein:
K.S.A. 1988 Supp. 8-1567; 8-2117; 38-1602; K.S.A.
38-802, 38-815, repealed L. 1982, ch. 182, § 150;
L. 1978, ch. 158.

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Dear Mr. Morrow:

You request our opinion regarding the authority of a municipal
court to hear prosecutions of juveniles who are 16 or 17 years
of age at the time of allegedly violating a city ordinance

which prohibits the acts prohibited by K.S.A. 1988 Supp. 8-1567, driving under the influence of alcohol or drugs.

In Attorney General Opinion No. 77-288, Attorney General Schneider concluded that "[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 . . . as defined by K.S.A. 1976 Supp. 8-1567 . . . for such persons are liable to be proceeded against as miscreant children as defined by K.S.A. 1976 Supp. 38-803(c)." Since the date this opinion was issued, however, K.S.A. 38-803 has been repealed and K.S.A. 1988 Supp. 8-2117 was enacted.

As originally enacted, K.S.A. 8-2117 provided in part:

"Subject to the provisions of this section, a court of competent jurisdiction may hear prosecutions of traffic offenses as permitted by subsection (b) of K.S.A. 1977 Supp. 38-815, as amended, involving any child fourteen (14) years of age or more but who is less than eighteen (18) years of age. . . ." L. 1978, ch. 158, § 34.

K.S.A. 1977 Supp. 38-815, as amended, provided as follows:

"(b) Whenever a child fourteen (14) years of age or older is charged with a traffic offense described in subsection (e) of K.S.A. 1977 Supp. 38-802, as amended, the prosecution of such offense shall not be heard pursuant to the juvenile code but shall be commenced in a court of competent jurisdiction in the same manner as prosecutions involving adults, subject to the provisions of section 34." L. 1978, ch. 158, § 10.

K.S.A. 1977 Supp. 38-802(e), as amended, described traffic offense as:

"(1) Any statute relating to the regulation of traffic on the roads, highways or streets, or the operation of self-propelled or nonselfpropelled vehicles of any kind except K.S.A.

8-262, 8-287, 8-1566, 8-1568 or 21-3405 and K.S.A. 1977 Supp. 8-1567; or (2) any city ordinance or county resolution which relates to the regulations of traffic on the roads, highways or streets, or the operation of selfpropelled or nonselfpropelled vehicles of any kind, except when such ordinance or resolution violation would also constitute a violation of K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 or K.S.A. 1977 Supp. 8-1567." L. 1978, ch. 158, § 1 (emphasis added).

Thus, as originally enacted, K.S.A. 8-2117 did not authorize prosecution for DUI of persons 16 and 17 years of age outside the juvenile code.

K.S.A. 38-802 and 38-815 were both repealed effective January 1, 1983 when the new code for care of children and juvenile offenders code were enacted. L. 1982, ch. 182. At that time K.S.A. 8-2117 was also amended to essentially its current form with the exception of the language referring specifically to K.S.A. 8-1567 which was added in 1986. The new juvenile offenders code defined "juvenile offender" at K.S.A. 1988 Supp. 38-1602(b) and excluded from the definition persons 14 or more years of age who commit traffic offenses "in violation of chapter 8 of the Kansas Statutes Annotated or any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets. . . ." The portion of this provision pertinent to our concern has not since been amended.


Subsequent to the repeal of K.S.A. 38-802 and 38-815 and until the 1986 amendment of K.S.A. 8-2117, the statutes did not specifically state whether a juvenile 16 or 17 years of age could be prosecuted as an adult for driving under the influence. The Kansas Court of Appeals, however, has held that the enactment of the juvenile offenders code caused all traffic offenses committed by persons fourteen or more years of age, including DUI, to be subject to prosecution as adult violations. In re Hockenbury, 9 Kan.App.2d 450 (1984). Further, Chapter 3 of the Judicial Council's Kansas Municipal Court Manual at section 3.06 indicates that a municipal court does have jurisdiction, as "a court of competent jurisdiction" under K.S.A. 1988 Supp. 8-2117, to hear prosecutions of ordinances prohibiting the acts prohibited by K.S.A. 1988 Supp. 8-1567.

Based on the 1986 amendment to K.S.A. 8-2117, the Court of Appeals opinion in In re Hockenbury and the Municipal Court Manual, it is our opinion that a municipal court has the authority to hear prosecutions of persons 16 and 17 years of age for violations of municipal ordinances prohibiting the acts prohibited by K.S.A. 1988 Supp. 8-1567. Attorney General Opinion No. 77-228, due to changes in the applicable statutes, is hereby withdrawn.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm