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ATTORNEY GENERAL OPINION NO. 90- 54

Paul J. Morrison
Johnson County District Attorney
Johnson County Courthouse
Olathe, Kansas 66061

Re: State Boards, Commissions and Authorities--Crime
Victims Compensation Board--Victim of Crime;
Notification of Public Hearing; Juvenile Offenders
Aged 16 and Over

Minors--Kansas Juvenile Offenders Code--
Confidentiality of Proceedings

Synopsis: Victims of crimes shall be notified of public hearings where the accused or convicted person has the right to appear and be heard. Juvenile proceedings are not deemed or held to impart a criminal act on the part of any juvenile, but open court proceedings are included in the definition of a public hearing of which victims shall be notified. Juvenile proceedings are court proceedings and adjudicatory proceedings in juvenile offender cases where the juvenile was over 16 years of age at the time are open to the public. Thus, K.S.A. 74-7335 shall be utilized by the district or county attorney in notifying victims of adjudicatory proceedings in juvenile offender cases where the juvenile was over 16 years of age at the time of the alleged offense. Cited herein: K.S.A. 38-1601; 38-1652; K.S.A. 1989 Supp. 74-7335.

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Dear Mr. Morrison:

As district attorney of Johnson county, you request our opinion concerning victim notification in juvenile offender cases. Specifically, you ask whether the notification of public hearings to victims of crime applies to adjudicatory proceedings in juvenile offender cases where the juvenile was over sixteen (16) years of age at the time of the alleged offense.

The notification of public hearing to victims of crimes is governed by K.S.A. 1989 Supp. 74-7335. The statute provides in part:

"(a) The victim of a crime or the victims' family shall be notified of the right to be present at any public hearing where the accused or the convicted person has the right to appear and be heard."

The statute also defines "public hearing" as follows:

"(b) As used in this section: (1)
"Public hearing" means any court proceeding or administrative hearing which is required to be open to the public. . . ."

It is clear from the statute that victims of crimes shall be notified of any court proceeding which is required to be open to the public. Your question arises in considering K.S.A. 38-1601. That statute provides in part:

"In no case shall any order, judgment or decree of the district court, in any proceedings under the provisions of this code, be deemed or held to import a criminal act on the part of any juvenile. . . ."

It appears this statute was enacted so juvenile offenders would not have the stigma of being criminals. In State, ex rel., v. Owens, 197 Kan. 212 (1966), the Supreme Court noted: "The whole design of the juvenile laws is to avoid charging the juvenile offender with crime, thus making inappropriate application of the criminal laws of the state." 197 Kan. at 223. Although juvenile offenders are not charged with a crime, they are still adjudicated and

disposition is had, which constitutes a court proceeding presided over by a judge. The Supreme Court of Kansas in State v. Muhammad, 237 Kan. 850 (1985) stated: "In Kansas, a juvenile proceeding has long been considered a civil proceeding of a protective nature totally divorced from any criminal implications." 237 Kan. at 854. Civil proceedings and criminal proceedings are both court proceedings. Requiring notification of the victim or the victim's family of a juvenile proceeding otherwise required to be open to the public does not transform the juvenile proceeding into a criminal proceeding, and in our opinion does not impute a criminal act on the juvenile.

Your question is ultimately answered by K.S.A. 38-1652. This statute provides in part:

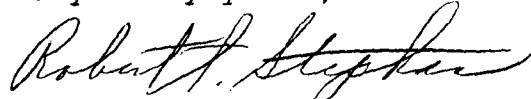
"(a) If the respondent was 16 or more years of age at the time of the alleged offense, the hearing shall be open to the public." (Emphasis added).

This statute alludes to an alleged offense which the respondent or juvenile committed. The adjudicatory hearing is open to the public. No one shall be kept out. Therefore, whether a victim is notified or not, he or she may attend. It should be noted that only the adjudicatory hearing is a public hearing. (See Stauffer Communications, Inc. v. Mitchell, et. al., No. 64,424, April 13, 1990).

Although the juvenile offender is not accused or convicted as an adult is, he or she is still adjudicated and disposition is had. Adjudication is done through a court proceeding which is included in the definition of a public hearing of which victims shall be notified under K.S.A. 74-7335.

In summary, K.S.A. 74-7335 shall be utilized in notifying victims of adjudicatory proceedings in juvenile offender cases where the juvenile was over 16 years of age at the time of the alleged offense.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Edwin A. Van Petten
Deputy Attorney General