

FILE

Subject

Courts

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General
Shawnee-Criminal
Warrant



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

May 17, 1974

Opinion No. 74- 159

The Honorable Bill G. Honeyman
Judge of the Juvenile Court
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Judge Honeyman:

In your letter of April 22, 1974, you ask whether a Juvenile Court Judge has the statutory authority to issue a search warrant with respect to the search and seizure of property belonging to a juvenile. You cite as possible authority the use of the word "warrant" in the specification of juvenile court's powers found in K.S.A. 38-809. You also refer to the definition of "magistrate" as set out in K.S.A. 1973 Supp. 22-2202 (i.e., Judges of Courts exercising limited criminal jurisdiction). In our opinion, the answer to your question must be in the negative.

Our primary objection to your interpretation stems from the fact that the Kansas Legislature has clearly divested the modern juvenile court of any criminal connotation with respect to the juveniles under its jurisdiction. K.S.A. 38-801. The search and seizure provisions of the Kansas Code of Criminal Procedure are designed to satisfy an individual's constitutional rights regarding his contact with the criminal laws of this state. Of course, the landmark case in the area of the constitutional rights of juvenile offenders is the 1967 case of In Re: Gault, 387 U.S. 1. In that case, and in subsequent cases amplifying or distinguishing the court's ruling in Gault, it is nowhere intimated that the constitutional rights of a juvenile are in any way infringed by the issuance of a search warrant, pertinent to him, by a neutral magistrate other than a juvenile court judge.

It would also appear that our Code of Criminal Procedure precludes the interpretation of K.S.A. 38-809 which you urge. K.S.A. 1973 Supp. 22-2202(12)(c) defines a "magistrate," in pertinent part, as a judge of a court "exercising limited criminal jurisdiction under the laws of the state of Kansas."

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Courts of limited jurisdiction are defined in the Code as including "all courts of the state except. . .juvenile courts." K.S.A. 1973 Supp. 22-2601. We believe this provision effectively prohibits juvenile court judges from issuing search warrants.

Should you have any further questions regarding this matter, please do not hesitate to call upon us at your convenience.

Very truly yours,



VERN MILLER
Attorney General

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