



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 14, 1976

ATTORNEY GENERAL OPINION NO. 76-15

Mr. Phillip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

RE: Infants - Juvenile Code - Jurisdiction of the
Juvenile Court Over Married Persons Under the
Age of Eighteen Years.

SYNOPSIS: The amenability of a person under the age of
eighteen (18) years to the Kansas Juvenile
Code remains unaffected by the marriage of
such person.

* * *

Dear Mr. Winter:

Due to the change enacted in 1972 of K.S.A. 38-101, you have asked whether the amenability to the Kansas Juvenile Code, K.S.A. 38-801 et seq., of a person under the age of eighteen (18) years is affected by the marriage of such person.

The present statute, 38-101 provides: "The period of minority extends in males and females to the age of eighteen (18) years."

Prior to amendment the provisions of that statute were as follows:

"The period of minority extends in males and females to the age of twenty-one (21) years: Provided, That every person eighteen (18) years of age or over who is or has

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been married, shall be considered of the age of majority in all matters relating to contracts, property rights and liabilities, and the capacity to sue and be sued. (L. 1965, Ch. 274 §1).

Also, K.S.A. 38-802(b), (c), (d) and (g) define the terms delinquent child, miscreant child, wayward child and dependent and neglected child. Each of these definitions includes as one of its essential elements the requirement that the child be less than eighteen (18) years of age. There is no mention of marital status in these definitions.

The effect of marriage upon the status of a person less than eighteen (18) years of age is that it emancipates such person. While emancipation by marriage affects the parents' rights and obligations with respect to the infant, such emancipation does not otherwise remove the incapacity of his minority. Emancipation does not by itself operate to make the minor sui juris. 42 Am.Jr.2d, Infants §3.

The general rule with respect to the state's treatment of such persons is that the guardianship of the state over children provided by statutes relating to delinquent children is paramount to any rights which may be acquired by the child through marriage. 14 A.L.R.2d 336, Annot. Accordingly, a juvenile act applicable to persons under eighteen (18) applies to such person despite the fact that she is married. 47 Am.Jur.2d, Juvenile Courts, Etc. §28.

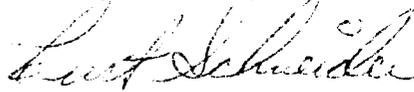
The Montana Court, dealing with facts and statutes strikingly similar to the ones you have presented, held that a married girl under the age of eighteen (18) years could be a juvenile delinquent. The court said the statute providing that any child under the age of eighteen (18) years found in specified situations "shall be deemed a delinquent child or a juvenile delinquent person," indicated a purpose to include within the purview of the statute all persons under eighteen (18) years of age whether married or not, and that the child's marriage did not change its status from that of minor to adult, within the meaning of statutes defining those terms, unless some statute expressly so provided. State ex rel. Foot v. District Court, 77 Mont. 290, 250 P. 973, 49 A.L.R. 398.

The Kansas Court, although not dealing with the amenability of a child to the Juvenile Code, observed that in view of G.S. 1949, 38-101, a child seventeen (17) years of age is still a minor, even though married. Ortiz v. Ortiz, 180 Kan. 334, 336, 304 P.2d 490 (1956).

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Therefore, it is my opinion, based upon the weight of authority that the amenability of a person under the age of eighteen (18) years to the provisions of the Juvenile Code remains unaffected by the marriage of such person.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curt T. Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JAW:en