



STATE OF KANSAS

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ATTORNEY GENERAL

November 16, 1978

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ATTORNEY GENERAL OPINION NO. 78- 366

Mr. Keith D. Hoffman
Assistant County Attorney
Dickinson County Courthouse
325 Broadway
Abilene, Kansas 67410

Re: Juvenile Code--Miscreant Children--Traffic Offenses

Synopsis: A child under the age of fourteen years who is alleged to have committed certain serious traffic violations is properly classified as a miscreant child, as defined at K.S.A. 1977 Supp. 38-802(c)(1) as amended.

* * *

Dear Mr. Hoffman:

You inquire concerning the procedure for charging a minor child under the age of fourteen years with a serious traffic violation, i.e., offenses under K.S.A. 8-262 (driving with cancelled, suspended or revoked license); K.S.A. 8-286 (habitual violator); K.S.A. 8-1566 (reckless driving); K.S.A. 1977 Supp. 8-1567 (driving while intoxicated); K.S.A. 8-1568 (fleeing or evading a pursuing police vehicle); and K.A.S. 21-3405 (vehicular homicide).

K.S.A. 1977 Supp. 38-802(e) was amended by the 1978 legislature Ch. 158, § 1, L. 1978, to provide thus:

"'Traffic offender' means a child under fourteen (14) years of age who does an act which, if done by a person fourteen (14) years of age or over, would make such person liable to be arrested and prosecuted for the violation of any of the following traffic offenses:

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(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 K.S.A. 8-262, 8-287, 8-1566, 8-1568 or 21-3405 or K.S.A. 1977 Supp. 8-1567; or

(2) Any city ordinance or county resolution 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, except when such ordinance or resolution violation would also constitute a violation of K.S.A. 8-262, 8-287, 8-1566 or 21-3405 or K.S.A. 1977 Supp. 8-1567."

Thus, children under fourteen years of age who are charged with traffic offenses, excepting those serious offenses specifically enumerated by statutory references, are treated as "traffic offenders" under the juvenile code.

The 1978 Legislature also amended K.S.A. 1977 Supp. 38-815, by adding a new subsection (b) as follows:

"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."

Subsection (e), quoted above, sets out two classes of traffic offenses, first, those which are violations of "[a]ny 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," and secondly, the specific offenses which are excepted from this class by reference to six separate statutes, all of which describe the offenses generally regarded as more serious.

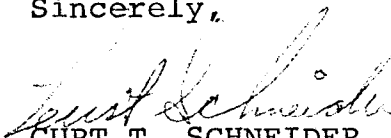
Minor children including those under the age of fourteen years, who commit the enumerated serious traffic offenses fall within the class described as "miscreant" children. A "miscreant" child is defined at K.S.A. 1977 Supp. 38-802(c)(1) as a child less than eighteen years of age.

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"Who does an act, other than one defined in subsection (e) 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."

K.S.A. 21-3405 denotes vehicular homicide as a Class A misdemeanor. Violations of K.S.A. 8-262, 8-286, 8-1566, 8-1568, and K.S.A. 1977 Supp. 8-1567 are violations of city ordinances in those cities which have adopted the Standard Traffic Ordinance. Thus a minor accused of violating any of the above-defined serious traffic offenses is denoted miscreant and should be charged as a miscreant under K.S.A. 38-801(c) (1).

Sincerely,


CURT T. SCHNEIDER
Attorney General

CTS:LCD:jj