

Opinion No. 65-128

July 12, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

TO: E. H. Williams, Jr., District Attorney, County Court House, Las Cruces, New Mexico

QUESTION

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1. May a district court enter a blanket order having the effect of permitting juvenile traffic violators to be tried by justice of the peace or municipal courts.
2. May juveniles be tried as adults before justice of the peace and municipal courts for traffic violations.

CONCLUSIONS

1. No.
2. No.

OPINION

{*216} ANALYSIS

Section 13-8-19, N.M.S.A., 1953 Compilation (P.S.) sets forth the pertinent provisions of our laws covering the treatment of juvenile law violators. Section 13-8-20, N.M.S.A., 1953 Compilation (P.S.) defines a juvenile as a person less 18 years of age. Section 13-8-24, N.M.S.A., 1953 Compilation (P.S.) provides that the juvenile court attorney or in a proper case a juvenile probation officer **shall** investigate any complaint of a responsible person that the juvenile has committed an offense under the provisions. Section 13-8-25, N.M.S.A., 1953 Compilation (P.S.) governs the procedure as to further proceedings by the juvenile attorney. Section 13-8-26, N.M.S.A., 1953 Compilation (P.S.) provides that:

"The juvenile court shall have exclusive original jurisdiction in proceedings:

A. Concerning any juvenile under the age of eighteen [18] years living or found within the county:

(1) Who has violated **any law of the state, or any ordinance** or regulation of a political subdivision thereof; Provided, however, that juveniles **may in the discretion** of the

juvenile court be treated **as adults** where the juvenile has violated state traffic laws, or traffic ordinances. . . ." (Emphasis added).

Section 13-8-27, N.M.S.A., 1953 Compilation (P.S.) provides that no person under eighteen years of age **shall be charged with any offense in any court other than a juvenile court**. The section contains a proviso that if a juvenile fourteen years of age or older is charged **in juvenile court** with an offense **amounting to a felony** the court **after full investigation** may certify such and cause a trial by a court having jurisdiction over such offense as if committed by an adult.

Section 13-8-28, N.M.S.A., 1953 Compilation (P.S.), provides that if during the course of a trial it is ascertained that the defendant was a juvenile at that time the alleged offense occurred the court shall **forthwith** transfer such case to the juvenile court.

In connection with consideration of the questions presented we have been handed a copy of a proposed general order of a juvenile court which provides that all juveniles within the county charged with a violation of state or municipal laws or regulations concerning traffic on streets and highways be handled by the arresting officer, justice of the peace and municipal court judges in the same manner as though such juveniles were adults unless the charge is DWI or narcotics, a traffic violation in which there is serious damage {*217} to persons or property including loss of life or a charge involving a driver having no valid driver's license. Our attention is also called to a previous Opinion of this office No. 57-218 appearing at page 328, Report of the Attorney General 1957-58 which held in substance that juvenile traffic violators must necessarily be treated the same as a juvenile violator of any other section of our laws, and to Opinion No. 60-199 appearing at page 604, Report of the Attorney General 1959-1960, holding that all juveniles must originally be cited into juvenile court, or if his age is unknown and some other court into which he has been cited discovers that he is a juvenile, then the case must be transferred to the juvenile court.

The question presented requires an interpretation in particular of the language "provided, however, that juveniles may in the **discretion** of the juvenile court be treated as adults. . . ." A blanket order such as that described would involve a construction of this particular clause so as to allow the juvenile court, within its discretion, to state that **all** juvenile traffic violators should be treated as adults. The construction previously placed upon that clause by this office is that such permits the juvenile judge to exercise his discretion in **each** case of a juvenile brought before him for a traffic violation and if he so desires to impose the **same penalties** upon the juvenile for the traffic violation that the court could impose upon an adult.

It is our opinion that Opinion No. 57-218, supra of this office is correct and should still be followed. The juvenile court is given exclusive jurisdiction over juveniles. Section 13-8-2, N.M.S.A., 1953 Compilation.

The case of **In Re Santillanes**, 47 N.M. 140, 138 P. 2d 503 discusses the theory of our juvenile code at length including the exclusive feature of jurisdiction mentioned above and quotes with approval statement found in 31 Am. Jur. Section 7:

"Juvenile courts are generally defined as the court having **special** jurisdiction, **of a paternal** nature, over delinquent and neglected children. . . ." (Emphasis added) (The above quotation was from the original volume of America Jurisprudence and is now set forth as Section 3 of the present volume.)

The Court then went on to state in considering another point as follows:

"The courts, quite uniformly, in distinguishing such proceedings from ordinary criminal prosecutions, bottom their decisions as to the constitutionality of such acts upon the premise that the state is thus exercising an inherent power as *parens patriae* to interfere, on behalf of the child, including such interference between them and their parents, when the morals, safety or interests of the children require it." (Citing cases.).

The Court found that different procedures were called for under the juvenile code than under the ordinary criminal code and that the juvenile delinquent **was in no case** to be regarded as a criminal. The provisions of Section 13-8-27, N.M.S.A., 1953 Compilation (P.S.) provides for a method for transferring the case of the juvenile over 14 years of age charged with a felony to the District Court for trial as an adult offender and said section requires the Court, in its **discretion**, to certify such child for proper criminal proceedings. This section, in our opinion, provides the exclusion method for transferring a case from the juvenile docket to the criminal docket of any court and requires discretion to be exercised in each individual case. The Opinion No. 57-218 of this office, states that the effect of Section 13-8-6, *supra* is to set forth penalties that **may** be imposed in the discretion of the juvenile court but that the {218} effect **is not** to treat the juvenile as a criminal in proceedings involving traffic violations.

In the absence of legislative declaration, the Court is without power to enter a blanket order determining that, for a specific type of offense, the juvenile shall be treated as an adult offender in some court other than juvenile court, thus rendering him a criminal in every case involving a traffic violation, if convicted the same as though charged with a felony and transferred under Section 13-8-27, *supra*. This violates the entire spirit of our juvenile delinquent act as described in **In re Santillanes**, *supra*. We therefore decline to overrule Opinion No. 57-218, page 328, *supra* and expressly affirm the same.