

## Opinion No. 68-24

February 20, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** John E. Hobbes, District Attorney Eighth Judicial District P.O. Box 1017 Raton, New Mexico

### QUESTIONS

May a person under eighteen (18) years of age be prosecuted for possession of alcoholic beverages in a municipal court or a justice of the peace court?

### CONCLUSION

No.

### OPINION

#### {\*45} ANALYSIS

Section 13-8-26 (A)(1), N.M.S.A., 1953 Compilation, of the Juvenile Code sets forth the jurisdiction of our juvenile courts as follows:

"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 or regulations of any political subdivision thereof.**" (Emphasis added.)

Section 13-8-27, N.M.S.A., 1953 Compilation, provides in part as follows:

**"No person under the age of eighteen [18] years shall be charged with the commission of any offense,** including a felony, **in any court other than the juvenile court** and any person knowingly charging a child under eighteen [18] years of age with an offense in any court other than the juvenile court may be punished for contempt of the juvenile court by the judge thereof. Provided, however, that if any child fourteen [14] years of age or older is charged in juvenile court with an offense which would be a felony if committed by an adult, and if the court after full investigation deems it contrary to the best interests of such child or of the public to retain jurisdiction, the court may in

its discretion certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such offense if committed by an adult; but no child under fourteen (14) years of age shall be so certified." (Emphasis added.)

The first problem presented is whether "or regulations" as used in Section 13-8-26(A)(1), *supra*, refers to regulations other than municipal traffic regulations. The precise language again is as follows: "juveniles may in the discretion of the juvenile court be treated as adults where the juvenile has violated state traffic laws, or traffic ordinances or regulations of any political subdivision" of the state. We believe that this is a situation where the rule of statutory construction **noscitur a sociis** applies. Under the rule of **noscitur a sociis** it is presumed that where two or more words of analogous meaning are employed together in a statute, they are understood to be used in the same sense. **Perris v. Perris**, 202 P.2d 731, 733 (Utah, 1949); Black's Law Dictionary (4th Ed., 1949). Since the terms "ordinances" and {46} "regulations" are synonymous, (**State ex rel Krebs v. Hocter**, 83 Neb. 690, 120 NW 199 (1909)) we must conclude that the term "regulations" is used in the same sense as the term "ordinances" in Section 13-8-26(A)(1), and therefore regulations as used in this section refers only to traffic regulations.

The same results must be reached if we follow the general rule of statutory construction, **ejusdem generis**. Under this rule, general words in a statute which follow a designation of a particular subject will ordinarily be presumed to be restricted to embrace only the particular subject. **Murphy v. Morley**, 63 N.M. 267, 317 P.2d 817 (1957); **Grafe v. Delgado**, 30 N.M. 150, 228 Pac. 601 (1924). In section 13-8-26(A)(1), the term "traffic" is the particular subject and therefore under the rule of statutory construction **ejusdem generis**, regulations must be limited to traffic regulations.

In the opinion request, it is suggested that there is a possible conflict between two statutes dealing with juveniles, the Liquor Control Act and the Juvenile Code. Under Section 13-8-27, *supra*, of the Juvenile Code, no person under the age of eighteen years can be charged with the commission of any crime in any court other than a juvenile court unless the offense charged is a felony and the juvenile court judge deems it in the best interest of the juvenile or the public for the juvenile to be tried as an adult.

Section 46-10-12 of the Liquor Control Act provides in part as follows:

**"It is a violation of the Liquor Control Act for any minor to buy, receive, possess or permit himself to be served with any alcoholic liquor except when accompanied by his parent, guardian, adult spouse or an adult person into whose custody he has been committed for the time by some court, who is actually, visibly and personally present at the time the alcoholic liquor is bought or received by him or possessed by him or served or delivered to him.**

**As used in the Liquor Control Act 'minor' means any person under twenty-one [21] years of age.**

Violation of this section by a minor with respect to possession is a petty misdemeanor." (Emphasis added.)

It is a general rule of statutory construction that where two statutes relate to the same subject matter both statutes must be harmonized, if possible, to give effect to each. **State ex rel State Park and Recreation Commission v. New Mexico State Authority**, 76 N.M. 1, 411 P.2d 984 (1966); **Atchison, T. & S.F. Ry. Co. v. Town of Silver City**, 40 N.M. 305, 59 P.2d 351 (1936). If we are to give effect to both the Juvenile Code and the Liquor Control Act, we must conclude that "minors" over eighteen but under twenty-one years of age are to be charged with violations of Section 46-10-12(B), supra, in any court having original jurisdiction. Juveniles under the age of eighteen years of age who are charged with a violation of Section 46-10-12(B) are under the jurisdiction of the juvenile court and must be treated as juveniles.

By: Gary O'Dowd

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