

## Opinion No. 75-67

December 3, 1975

**BY:** OPINION OF TONEY ANAYA, Attorney General

**TO:** David W. Bonem Assistant District Attorney Ninth Judicial District Curry County  
Courthouse Clovis, New Mexico 88101

### QUESTIONS

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1. Under what circumstances can a traffic citation be issued to a child who has not reached his fifteenth birthday?
2. Do the magistrate courts or the municipal courts have jurisdiction over any traffic offenses committed by a child who has not reached his fifteenth birthday?

#### CONCLUSIONS

1. See Analysis.
2. See Analysis.

### OPINION

#### {\*178} ANALYSIS

Initially, we note that the memorandum opinion issued by the Clovis City Attorney and yourself relied on Section 13-14-45, NMSA, 1953 Comp. (1973 P.S.). The jurisdiction established by that section, however, applies only to "a child who has reached his fifteenth birthday." Consequently, Section 13-14-45, **supra**, does not create a jurisdictional basis in the district court for a child who has **not** reached his fifteenth birthday.

{\*179} The jurisdiction of the children's court division of the district court is set forth in Section 13-14-9, NMSA, 1953 Comp. (1974 Supp.), which provides, in part:

"A. The court has exclusive original jurisdiction of all proceedings under the Children's Code (13-14-1 to 13-14-45) in which a child is alleged to be:

- (1) a delinquent child; or
- (2) a child in need of supervision;"

A "delinquent child" is "a child who has committed a delinquent act and is in need of care or rehabilitation." Section 13-14-3(O), NMSA, 1953 Comp. (1973 P.S.). A "delinquent act" is

"an act committed by a child, which would be designated as a crime under the law if committed by an adult, except for offenses under municipal traffic codes or the Motor Vehicle Code other than the following offenses when committed by a child who has not reached his fifteenth birthday:

- (1) driving while under the influence of intoxicating liquor or drugs;
- (2) failure to stop in the event of an accident causing death, personal injuries or damage to property;
- (3) reckless driving;
- (4) driving without a valid operator's license or permit;
- (5) any offense punishable as a felony; or
- (6) any offense not within the trial jurisdiction of magistrate or municipal courts." (Section 13-14-3(N), **supra**.)

We conclude from Section 13-14-3(N), **supra**, that certain traffic offenses, e.g., careless driving, defective tail lights, are not "delinquent acts" by definition. Therefore a child who has **not** reached his fifteenth birthday and who has committed traffic offenses not classified as a "delinquent act" is not a "delinquent child." Consequently, in these instances, the children's court division of the district court does not have exclusive original jurisdiction, unless such offenses come within the definition of a "child in need of supervision." A child in need of supervision is a child who

". . .

- (3) has committed an offense not classified as criminal or one applicable only to children; and
- (4) . . . is in need of care or rehabilitation." (Section 13-14-3(M), **supra**).

We can state our conclusion affirmatively in the following manner. These requirements must be met in order that the magistrate court or municipal court have jurisdiction of a traffic offense committed by a child who has not reached his fifteenth birthday:

- (1) The child must not be a "delinquent child." Thus, the offense committed must not be a "delinquent act" as defined by Section 13-14-3(N), **supra**;

(2) The child must not be a "child in need of supervision" as defined by Section 13-14-3(M), **supra**;

(3) The offense must be one which is within the trial jurisdiction of the magistrate court {*\*180*} or the municipal court. Section 13-14-3(N), **supra**.

We need not list all the offenses which would meet the above requirement. As a general statement, it can be said that the magistrate court or the municipal court has jurisdiction over children who have not reached their fifteenth birthday, except for those offenses which are exclusively within the jurisdiction of the children's court division of the district court, as indicated by Sections 13-14-9, 13-14-3(M), 13-14-3(N), **supra**. It follows that traffic citations can only be issued to children who have not reached their fifteenth birthday in accordance with the advice contained herein.

By: Ralph W. Muxlow II

Assistant Attorney General