

**OPINION
69-70**

July 30, 1969 (OPINION)

Mr. Rodney S. Webb

State's Attorney

Walsh County

RE: Civil Procedure - Juvenile Court Act - Definition of Minor Traffic

This is in reply to your letter of July 9, 1969, relative to the above captioned statute. You state the following facts and questions:

The Juvenile Law of the State of North Dakota has been changed by virtue of the 'Uniform Juvenile Act' recently adopted by the Legislature. The above referred to Section of the new law defines 'Minor traffic offense'. Since the commission of a minor traffic offense has been excluded from the Code's definition of a delinquent act, it is presumed that the traffic courts will handle minor Juvenile traffic offenses.

I am concerned with the problems which will face the traffic courts in determining what are minor traffic offenses. Particularly, I would request your opinion as to whether or not a violation of Section 39-08-18 (Open bottle law) or a violation of Section 5-01-08 (minor in possession) would be considered traffic violations?"

Section 27-20-02(10) of the North Dakota Century Code, as amended, provides:

DEFINITIONS. As used in this chapter:

* * *

0. 'Minor traffic offense' means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, other than negligent homicide, manslaughter, driving or being in control of a vehicle upon a highway while under the influence of intoxicating liquor, a narcotic or a drug, aggravated reckless driving, and driving a motor vehicle without, or during suspension of, a driver's license or permit."

As you have indicated, by exclusion from the statutory definition of a "delinquent act" (section 27-20-02(2)) the statutorily defined minor traffic offenses, the traffic courts would have jurisdiction of minor juvenile traffic offenses.

Section 5-01-08 of the North Dakota Century Code, as amended, provides:

PERSONS LESS THAN TWENTY-ONE YEARS PROHIBITED - EXCEPTION. Any person under twenty-one years of age purchasing, attempting to purchase or being in possession of alcoholic beverages or furnishing money to any person for such purchase or entering any licensed premise where such beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, is guilty of a misdemeanor."

We do not believe this section is in any manner to be considered as a traffic offense. The statute prohibits possession of alcoholic beverages by a person less than twenty-one years of age. It is not limited to possession of alcoholic beverages in a motor vehicle. While the statute may be violated by a person less than twenty-one years of age having in his possession alcoholic beverages in a motor vehicle, the fact that it was in a motor vehicle would be incidental to the crime since it is the possession by the minor that is material. It is therefore our opinion that a violation of section 5-01-08 of the North Dakota Century Code would not be considered a traffic violation and the traffic court would not have jurisdiction of such offense with regard to juveniles subject to the Juvenile Court Act.

Section 39-08-18 of the North Dakota Century Code, as amended, prohibits the drinking or consumption of alcoholic beverages in or on any motor vehicle when such vehicle is upon a public highway or in any area used principally for public parking. It further prohibits any person from having in his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. The statute further declares it unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle or in some area of the vehicle not normally occupied by the driver or passengers if the motor vehicle is not equipped with a trunk.

We note this provision is found in Title 39 governing motor vehicles. It is found in chapter 39-08 setting forth the regulations governing operators. As such we might conclude it is a traffic offense which, since not excluded from the definition of minor traffic offenses contained in section 27-20-02(10), would be a minor traffic offense within the meaning of the Juvenile Court Act. However, we would note the placement of statutes in the Code is supervised by the Code Revisor and is not a legislative act as such. At one time this provision was found in the Title "Alcoholic Beverages." See, e.g., section 5-0124 of the 1957 Supplement to the North Dakota Revised Code of 1943. The statute was placed under Title 39 by the Code Revisor in preparing the North Dakota Century Code. Thus the reference to section 5-01-24 contained in the Code Revisor's Notes for the North Dakota Century Code states:

Repealed by omission from the Code. The provisions of this section have been moved to chapter 39-08 which deals with operation of motor vehicles since it is felt that this is a more proper place for this section. A reference change has also been made."

While the Legislature adopted the North Dakota Century Code we do not believe the placement of this provision in Title 39 is necessarily decisive of the question at hand although we would note the Legislature has tacitly approved the placement in the Title "Motor Vehicles" by amendment and reenactment of the section by section number. See Chapter 275, 1965 S.L.; Chapter 309, 1967 S.L.

It might be argued the exclusions from the term "minor traffic offense" as used in section 27-20-02(10) are concerned with the actual operation of the motor vehicle by the driver and refer to some physical act on the part of the operator of the motor vehicle and that the offense described in section 39-08-18 is not such an offense. However, it is an offense which in part is concerned with the operation of a vehicle upon the highways of this State and therefore it could be argued the offense is within the definition of "minor traffic offenses" as described in section 27-20-02(10). We also note that in excepting offenses from the definition of "minor traffic offenses" the Legislature did not include the "open-bottle" violation. By not specifically excluding this offense from the definition of "Minor traffic offenses" an argument can be made that the Legislature intended this offense to be included within the definition. While the Legislature by excepting a violation of the law prohibiting persons driving while under the influence of intoxicating liquor from the definition of "minor traffic offenses" might well have intended to retain jurisdiction of offenses involving alcoholic beverages in the Juvenile Court, we note they did not specifically exclude the offense.

It appears to us that this matter will only be finally determined by judicial or legislative action. In this regard we would note that in those instances in which a juvenile is charged with a violation of section 39-08-18 he most probably would also be in violation of section 5-01-08 prohibiting possession of alcoholic beverages by a person less than twenty-one years of age. As we have noted before, that violation is not within the jurisdiction of the traffic court and therefore would be within the jurisdiction of the Juvenile Court.

Assuming a judicial determination of this matter is desired, it would appear the question would most probably arise if a juvenile was charged with a violation of section 39-08-18 in the regular court. We presume in that instance the objection to jurisdiction would be raised and in that manner the court would determine the question of jurisdiction. It is doubtful the question of jurisdiction would be raised so quickly if the minor was brought into Juvenile Court on the same charge. We do not mean to imply that as a matter of law a juvenile charged with a violation of section 39-08-18 must be brought into the regular court rather than Juvenile Court.

HELGI JOHANNESON

Attorney General