

Date Issued: July 31, 1981 (AGO 81-80)

Requested by: John M. Olson, State's Attorney, Burleigh County

- QUESTION PRESENTED -

Whether possession of an alcoholic beverage by a person under the age of eighteen years is a delinquent act or an unruly act.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the offense of possession of an alcoholic beverage by a person under the age of twenty-one, when committed by a person under the age of eighteen years, is a delinquent act.

-ANALYSIS -

Section 27-20-02 of the North Dakota Century Code contains the definitions of delinquent act and unruly child.

3. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection 10 and is not a traffic offense as defined in subsection 9.
10. "Unruly child" means a child who:
 - a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of himself or others;
 - c. Has committed an offense applicable only to a child; or
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; and
 - e. In any of the foregoing instances is in need of treatment or rehabilitation.

The offense of possession of alcohol by a person under twenty-one years of age is found at section 5-01-08, N.D.C.C.:

5-01-08. PERSONS UNDER TWENTY-ONE YEARS OF AGE PROHIBITED FROM ENTERING LICENSED PREMISES - PENALTY - EXCEPTIONS. Except as permitted in this section and section 5-02-06, 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 premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer entering the premises in the performance of official duty, is guilty of a class B misdemeanor.

This offense is designated a crime and therefore would be a delinquent act unless it falls under one of the stated exceptions. The offense does not fall within the definition of traffic offense and is applicable to all persons under the age of twenty-one years. Thus, a person under eighteen years of age who possesses alcoholic beverages in violation of section 5-01-08, N.D.C.C., has committed a delinquent act.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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Attorney General

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