

Office of the Attorney General
State of North Dakota

Opinion No. 81-86

Date Issued: August 13, 1981

Requested by: Bernard J. Haugen
Juvenile Supervisor of Juvenile Court
Southeast Judicial District

--QUESTIONS PRESENTED--

I.

Whether 'failure to appear' in violation of Section 39-06.1-04 of the North Dakota Century Code, or an equivalent ordinance, is a delinquent act over which the juvenile court has jurisdiction.

II.

Whether a court which has jurisdiction over non-criminal traffic violations has authority to punish for criminal contempt a child appearing in court to answer to a non-criminal traffic violation.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that the offense of 'failure to appear' in violation of Section 39-06.1-04, N.D.C.C., or an equivalent ordinance, is a violation of the laws governing the operation of a motor vehicle upon the highways of this state and is therefore excluded from the jurisdiction of the juvenile court.

II.

It is my further opinion that a court that has jurisdiction over non-criminal traffic violations has authority to punish a criminal contempt committed in the presence of the court by a child appearing in court to answer to a non-criminal traffic violation.

--ANALYSIS--

I.

Section 27-20-02, N.D.C.C., as amended by 1981 Legislative Assembly, contains the following definitions:

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:

- c. Has committed an offense applicable only to a child; . . .

9. '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, by a child who has been issued a valid operator's license or permit if one is required, other than negligent homicide in violation of section 12.1-16-03 and manslaughter resulting from the operation of a motor vehicle.

Section 39-06.1-04, N.D.C.C., reads as follows:

39-06.1-04. FAILURE TO APPEAR, PAY STATUTORY FEE, POST BOND--PROCEDURE--PENALTY. If a person fails to choose one of the methods of proceeding set forth in sections 39-06.1-02 or 39-06.1-03, he shall be deemed to have admitted to commission of the violation charged, and the official having jurisdiction shall report such fact to the licensing authority within ten days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, without paying the statutory fee or posting and forfeiting bond shall be a class B misdemeanor. Failure to appear without just cause at the hearing shall also be deemed an admission of commission of the violation charged.

A violation of Section 39-06.1-04, N.D.C.C., is a class B misdemeanor and therefore designated a crime under the law of this state. In order to remove this offense from the jurisdiction of the juvenile court, it must fall under Section 27-20-01(10)(c) or be a traffic offense as defined in Section 27-20-02(9), N.C.C.C.

A reading of Section 27-20-02(10)(c), N.D.C.C., clearly shows that this offense does not fall within that exception. However, the offense, as noted in Section 39-06.1-04, N.D.C.C., does fall within the definition of 'traffic offense.'

Chapter 39-06.1, N.D.C.C., deals with the disposition of traffic offenses. Since the child possessing a license or permit is subject to all other provisions contained in this chapter, the child is also subject to Section 39-06.1-04, N.D.C.C.

Chapter 39-06.1, N.D.C.C., is an integral part of the laws governing the operation of a vehicle upon the highways of this state which would place a violation of Section 39-06.1-04, N.D.C.C., in the 'traffic offense' exception of the definition to delinquent act found in Section 27-20-02, N.D.C.C.

II.

In Young vs. Knight, 329 S.W.2d 195 (KY 1959), it was held that a rule of contempt could be enforced against a seventeen-year-old girl refusing to answer questions during a grand jury investigation of a homicide allegedly committed by her father. This same holding was reached in the case of In Re Balucan, 353 P.2d 631 (HI 1960) affirming a summary punishment for contempt by a fifteen-year-old girl for refusing to answer questions asked of her as a witness in a criminal prosecution in a circuit court.

The court in State of Oregon vs. Tripp, 583 P.2d 591 (OR 1978) stated that:

'The ability of a court to preserve its own jurisdiction and orders transcends other concerns, such as the juvenile/adult distinction. Absent a specific statutory directive to the contrary, we hold that the court properly refused to transfer consideration of defendant's contempt to a juvenile court.'
583 P.2d 591, 593

The Supreme Court of Maryland held in the case of Thomas vs. State, 320 A.2d 538 (Md. 1974):

'We hold that Courts Art. section 3-804(a) conferring exclusive original jurisdiction over a juvenile is applicable to a case of direct contempt committed in another court in that the court in which the contempt occurs possesses full power to deal with the contemptuous juvenile in the same manner as it would any adult person who had committed a similar offense.'
320 A.2d 538 542

These cases, together with the inherent power of the court to punish for contempt, and the lack of any specific statutory directive to the contrary, lead us to the conclusion that a juvenile may be punished for contempt committed in the court that has jurisdiction over the juvenile for the offense at issue.

--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.

Robert O. Wefald
Attorney General

Prepared by: John E. Jacobson
Assistant Attorney General