

Opinion No. 57-106

May 16, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. Glenn B. Neumeyer, Assistant District Attorney, Second Floor Court House,
Las Cruces, New Mexico

QUESTIONS

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1. Does the proviso amending § 13-8-26, N.M.S.A., 1953 Compilation, Pocket Supplement, by Chapter 165, Laws of New Mexico, 1957, deprive the Juvenile Court of all power to act in cases of juvenile traffic violations?
2. Do all inferior courts have concurrent jurisdiction with the Juvenile Court where the juvenile has violated state traffic laws?
3. Can juvenile traffic offenders be placed in jail the same as adult offenders for violating state traffic laws or traffic ordinances or regulations of any political subdivision thereof?

CONCLUSIONS

1. No.
2. No.
3. See opinion.

OPINION

ANALYSIS

Section 13-8-26, supra, of the Juvenile Code of New Mexico, was amended by Senate Bill No. 77, Chapter 165, Laws of New Mexico, 1957, by the enactment of a proviso to the section at subsection a. The section now states in part:

"13-8-26. ORIGINAL JURISDICTION OF JUVENILE COURT. -- The juvenile court shall have exclusive original jurisdiction in proceedings: a. concerning any juvenile under the age of eighteen 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; . . ."

The proviso enacted into the Code is underlined above.

It is the opinion of this office that § 13-8-26, supra, as now amended, does not deprive the Juvenile Court of all power to act in cases of juvenile traffic violations. We further believe that the Juvenile Courts retain original and exclusive jurisdiction, even in the case of traffic violations, unless the Juvenile Court wishes that such offenders be treated as adult violators. 31 Am. Jur. § 8 states the nature and the purpose of Juvenile Courts as follows:

"A juvenile court is, it seems, a court of special and limited jurisdiction.

It is not the purpose of the statutes creating juvenile courts to provide additional courts for the punishment of crime. The purpose is to establish special tribunals having jurisdiction, within prescribed limits, of cases relating to the moral, physical, and mental well-being of children to the end that they may be directed away from paths of crime.

The basic conceptions which distinguish juvenile courts from other courts can be briefly summarized. Children are to be dealt with separately from adults. Their cases are to be heard at a different time and preferably in a different place; they are to be detained in separate buildings, and if institutional guidance is necessary, they are to be committed to institutions for children."

Portions of the above are cited with approval by our Supreme Court in the case of *In Re Santillanes*, 47 N.M. 140, 138 P. 2d 503.

In keeping with the above philosophy, § 13-8-28, N.M.S.A., 1953 Compilation, (P.S.), of the Juvenile Code, requires that if during the pendency of a criminal charge against any minor, in any other court, it shall be ascertained that the minor at the time of committing the alleged offense was under the age of eighteen, it shall be the duty of such Court forthwith to transfer the case, together with all other papers, documents and testimony connected therewith, to the Juvenile Court. The above section, in our opinion, was not superseded by the amendment to § 13-8-26. Section 13-8-26 confers exclusive jurisdiction on the Juvenile Court, and the amending proviso merely allows juvenile traffic offenders "to be treated as adults" if, in the opinion of the Juvenile Court, such is the necessary and proper course.

Our answer to question two is in the negative for the reasons given in question one. As indicated above, the Juvenile Court has original and exclusive jurisdiction to act in cases involving juvenile traffic violations. The proviso contained in Senate Bill No. 77 does not authorize the referral of juvenile traffic offenses to other courts in order that penalties received by adults in cases of traffic offenses could be invoked against the juvenile. The proviso simply states "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."

Inasmuch as the above does not specifically state that juveniles may be referred to courts having jurisdiction over adult violators, we believe that it was the intent of the Legislature to have the Juvenile Court assess penalties invoked against adult traffic violators when in the discretion of the Juvenile Court such seems to be the proper course of action.

We believe that the Juvenile Court, as intended by the Legislature, could subject a juvenile traffic violator to the same treatment given adults in cases of traffic accidents under § 13-8-53, N.M.S.A., 1953 Compilation, (P.S.), of the Juvenile Code. This section provides, in part, that the Juvenile Court may commit the juvenile to the custody of his parents or a responsible citizen, to any suitable institution, to the New Mexico Industrial School for Boys, or "take such other action as the Court deems necessary in the best interest of the child."

Under the above provision, we believe that the Juvenile Court could assess penalties against juvenile traffic violators which could consist of imprisonment, a fine, the assessment of costs and suspension of driving privileges, or any other penalty deemed suitable, which an adult traffic violator could receive for a traffic violation.

As indicated in question two, we answer question three in the affirmative. We believe that the Juvenile Judge could, in his discretion, place juvenile traffic offenders in jail for the violation of state traffic laws or traffic ordinances or regulations of any other political subdivisions thereof.