

Opinion No. 72-12

March 15, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Frank N. Chavez, Assistant Attorney General

TO: Mr. Louis R. Lopez, Chief, Administrative Services Administrative Office of the Courts, Supreme Court Building Santa Fe, New Mexico 87501

QUESTIONS

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May the State Police give a juvenile the option of accepting a penalty assessment on a traffic violation or must he appear in juvenile court?

CONCLUSION

The juvenile may be given the option.

OPINION

{*14} ANALYSIS

Section 64-22-4, N.M.S.A., 1953 Comp. (1971 P.S.) defines the violations for which a penalty assessment is allowed. Basically a penalty assessment is an option which is offered by an arresting officer to the alleged violator of certain traffic laws. The offer in effect allows the violator to acknowledge his guilt of the offense as stated on the penalty assessment notice and thus agree to pay an amount prescribed.

Section 13-8-26, N.M.S.A., 1953 Comp. establishes that the juvenile court has exclusive original jurisdiction **in proceedings** (emphasis added) of juveniles under the age of 18 who have violated any law of the state or any ordinance or regulation of any 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 sub-division. Section 13-8-26, **supra**.

An alleged juvenile violator who exercises his constitutional right to a trial on the merits for a traffic law violation must be tried in a juvenile court unless the juvenile court in its discretion allows the particular juvenile to be treated as an adult. However, Section 64-22-4.1 allows a violator to make an administrative plea of guilty. Section 64-22-4.1 does not define the court to which the plea applies. It is our opinion that no official court proceedings are begun by allowing a motorist to accept a penalty assessment, Section 64-22-4.1, **supra**.

It is also our opinion that the penalty assessment method acts as a convenience for the motorist who has admittedly violated the Motor Vehicle Code. If the motorist contests the allegation he has the opportunity for a hearing, Sections 64-22-7, 64-22-8, N.M.S.A., 1953 Comp. (1971 P.S.). Section 64-22-4.2, N.M.S.A., 1953 Comp. (1971 P.S.) provides that if a penalty assessment is not paid within five (5) days from the date of arrest the violator shall be prosecuted for the violation charged on the penalty assessment in a manner as if a penalty assessment notice had not been issued. A juvenile must be charged only in the juvenile courts if he fails to pay the penalty assessment. Section 13-8-26, **supra**. There is no indication that the jurisdiction for application of the penalty assessment statutes is limited to the magistrate court. Thus, we conclude that the State Police may give a juvenile the option of accepting a penalty assessment on a traffic violation but that if enforcement is necessary, he must be charged in the juvenile court.