

Opinion No. 72-34

August 4, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Winston Roberts-Hohl,
Assistant Attorney General

TO: Raymon Lara, Chief, Local Government Division, Department of Finance &
Administration, Legislative Executive Building, Santa Fe, New Mexico 87501

QUESTIONS

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1. In light of the fact that a municipal court has jurisdiction over traffic offenses under municipal ordinances and the exception in the Children's Code refers to "offenses under the Motor Vehicle Code" do municipal courts have jurisdiction over children for traffic offenses in violation of municipal ordinances?
2. If so, are the hearings on traffic violations in municipal courts closed to the public?

CONCLUSIONS

1. Yes.
2. No.

OPINION

{*59} ANALYSIS

1. Subsection 13-14-3(N), N.M.S.A., 1953 Comp. (1972 Interim Supp.) excludes from its definition of delinquent acts offenses under the Motor Vehicle Code except for four enumerated offenses and any other offense punishable as a felony. It is our opinion that the reference to the Motor Vehicle Code is a generic and not a specific reference.

Municipal traffic ordinances presently in force in New Mexico are compiled in the New Mexico Uniform Traffic Ordinance 1970 Edition which is adopted by municipalities under the authorization of Section 14-16-5, N.M.S.A., 1953 Comp. (Repl. Vol. 1968). The traffic ordinances are derivatives of the New Mexico Motor Vehicle Code and when considered for purposes of offenses likely to be committed by children, the State Motor Vehicle Code and municipal traffic ordinances are identical.

We recognize that Section 64-1-1, N.M.S.A., 1953 Comp. (2nd Repl. Vol. 1971) specifically authorizes the citation of the State laws governing motor vehicles as the "Motor Vehicle Code" but we can find no indications in the Children's Code that would

justify restricting the use of the phrase "Motor Vehicle Code" in the Children's Code to the State's Motor Vehicle Code with the exclusion of municipal traffic ordinances on the same subject.

An analysis of Section 13-14-45, N.M.S.A., 1953 Comp. (Interim Supp. 1972) supports our conclusion. This section reads:

"No tribunal may incarcerate any child who has been found guilty of any traffic violation not consisting of a delinquent act under the Children's Code [13-14-1 to 13-14-45] without first securing the approval of the children's court. At the discretion of the court any fine levied against a child may be worked off in suitable jobs for governmental or non-profit agencies at a rate equal to the minimum wage."

This section clearly contemplates the trial of a child in tribunals other than the children's court for traffic violations not deemed delinquent acts. Nevertheless, it refers to the generic "traffic violation" and not to the specific violation of the Motor Vehicle Code. Furthermore, except for secrecy at the hearing (see answer to question # 2) the protection offered children for violation of traffic offenses would in no way be diminished in a municipal court. Hence, we can conceive of no reason why the Children's Code should be interpreted to deny jurisdiction of municipal courts over violation of city traffic ordinances which are not deemed delinquent acts.

2. It is our opinion that these hearings in municipal courts are public. We start with the premise that courts operate in a forum of full disclosure and unless there are exceptional reasons, hearings in chambers are to be avoided. Section 16-1-1, N.M.S.A., 1953 Comp. (Repl. Vol. 1970) reads:

"All courts of this state shall be held openly and publicly, and all persons whatsoever shall be freely admitted within the same, and permitted there to remain so long as they shall observe good order and decorum."

Hearings for those traffic offenses which are delinquent acts, which come exclusively under the jurisdiction of the children's court, are expressly not public hearings. Section 13-14-28(B), N.M.S.A., 1953 Comp. (1972 Interim Supp.). We note further that in areas of additional jurisdiction of the family court, when juveniles and adults may be parties before the court, there is provision for hearings in chambers at the discretion of the court. Section 13-14-10(D), N.M.S.A., 1953 Comp. (1972 Interim Supp.). The silence of the Children's Code regarding proceedings in other tribunals indicates the absence of {*60} any intent to impose privacy in those proceedings.

Note, however, that our holding that the hearings in municipal courts are open to the public in no way suggests that we overrule that portion of Attorney General's Opinion No. 72-32 dated July 5, 1972, which said that records in magistrate and municipal courts regarding juveniles are to be private. In our opinion an open hearing concerning a child does not have the impact and is not as damaging as an open file with considerable data on a child.