

Opinion No. 72-64

November 20, 1972

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

TO: Martin E. Virgil, Chief, New Mexico State Police, Albuquerque Highway, Santa Fe, New Mexico 87501

QUESTIONS

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In view of the new Children's Code which court now has jurisdiction of offenses as listed in Sections 64-22-17 through 64-22-20, N.M.S.A., 1953 Comp.?

CONCLUSION

See analysis.

OPINION

{*104} ANALYSIS

Sections 64-22-17 through 64-22-20, N.M.S.A., 1953 Comp. are set out in full:

"Operation of a motor vehicle by a {*105} person under twenty-one years while possessing alcoholic liquor prohibited. -- No person under the age of twenty-one [21] shall operate a motor vehicle upon a public highway of this state while knowingly and unlawfully having in his possession any alcoholic liquor."

Section 64-22-18:

"Person under eighteen years of age operating a motor vehicle while possessing alcoholic liquor charged as a juvenile offender. -- Any person under the age of eighteen [18] years of age who violates section 1 [64-22-17] of this act [64-22-17 to 64-22-20] shall be charged as a juvenile offender."

Section 64-22-19:

"Minor driving motor vehicle while possessing alcoholic liquor -- Suspension of driver's license. -- Upon determination that a minor has violated the provisions of this act [64-22-17 to 64-22-20] the judge trying the case shall suspend the minor's driver's license for a period of not less than one [1] day but for not more than any period of time which runs past the twenty-first birthday of such minor."

Section 64-22-20:

"'Alcoholic liquor' defined. -- As used in this act [64-22-17 to 64-22-20], 'alcoholic liquor' means any and all distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one per cent [1/2%] alcohol, but excluding medicinal bitters."

Section 13-13-1, N.M.S.A., 1953 Comp. (1971 P.S.) provides as follows:

"Age of majority -- Eighteen years -- Exceptions. -- A. Except as provided in subsections B and C, notwithstanding any other law to the contrary:

(1) any person who has reached his eighteenth birthday shall be considered to have reached his majority and is an adult for all purposes the same as if he had reached his twenty-first birthday;

(2) any law conferring any right or privilege, or imposing any duty or obligation, upon any person who has reached his twenty-first birthday shall apply to any person who has reached his eighteenth birthday;

(3) any law which denies any right or privilege to persons who have not reached their twenty-first birthday shall apply only to persons who have not reached their eighteenth birth-day; and

(4) any law except the Liquor Control Act [46-1-1 to 46-11-4], which differentiates between treatment to be accorded persons who have reached their twenty-first birthday and those who have not, shall differentiate between treatment to be accorded persons who have reached their eighteenth birthday and those who have not.

B. It is the intent of the legislature that this general law shall control over any conflicting prior special law except that it shall not apply to or change any age requirements for exercising the elective franchise.

C. Provided, however, that for the purposes of the Uniform Gifts to Minors Act [48-20-1 to 48-20-10], as it relates to any gift made prior to the effective date of this act, the donee shall not be entitled to delivery or payment over of the gift until he has reached his twenty-first birthday."

Section 13-4-3, N.M.S.A., 1953 Comp. (1972 Interim Supp.) defines a delinquent child as a child who has committed a delinquent act and who is in need of care or rehabilitation. This section furthermore defines a delinquent act as:

"an act committed by a child, which would be designated as a crime under the law if committed by an adult, except for offenses under the Motor Vehicle Code other than: intoxicating liquor or drugs;

{*106} (2) failure to stop in the event of an accident causing death, personal injuries or damage to property;

(3) reckless driving;

(4) driving without a valid operator's license or permit; or

(5) any offense punishable as a felony;"

To summarize, violations of Sections 64-22-17 through 64-22-20, **supra**, are violations of the Motor Vehicle Code. Violations of the Motor Vehicle Code are not enforced in the Children's Court except for the five areas of enumerated exceptions. Section 13-14-3(N), **supra**. Sections 64-22-17 through 64-22-20, **supra**, outlining possession of alcoholic liquors by persons under the age of eighteen (Section 13-13-1, **supra**) is not an enumerated exception in Section 13-14-3(N) **supra**. It might appear that because the legislature did not specifically include this type of offense in Section 13-14-3 (N), **supra**, it intended this offense to be treated as a motor vehicle offense.

Section 13-14-3(M)(3), however, defines a child in need of supervision as one who "has committed an offense not classified as criminal **or one applicable only to children**;. . ." (Emphasis added.)

It might be argued that Sections 64-22-17 through 64-22-20, **supra**, are not criminal acts because no criminal penalties are provided in the act. [But see Section 64-10-7(B), N.M.S.A., for general penalties of the Motor Vehicle Code.].

In any event, we need not resolve the question whether violations of Section 64-22-17 through 64-22-20 are classified as criminal within the requirements of Section 13-14-3(M)(3) because the Act in question is clearly one applicable only to children. Accordingly, violators of this Act must be charged as "children in need of supervision" in the Children's Court Division of the District Court, Section 13-14-3, **supra**, Section 13-14-8, **supra**, and not in any other court.