

Office of the Attorney General
State of North Dakota

Opinion No. 87-23

Dated Issued: December 1, 1987

Requested by: Robert E. Manly
Eddy County State's Attorney

--QUESTION PRESENTED--

Whether a juvenile court or a municipal court has jurisdiction to hear a municipal ordinance open container violation when such violation is alleged to have been committed by a "child" as defined in N.D.C.C. § 27-20-02(1).

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a juvenile court has exclusive and original jurisdiction to hear a municipal ordinance open container violation when such a violation is alleged to have been committed by a "child" as defined in N.D.C.C. § 27-20-01(1).

--ANALYSIS--

The 1987 North Dakota Legislature in Senate Bill No. 2443 amended the definition of "unruly child" as found in N.D.C.C. § 27-20-02(10) by including those juveniles who have committed a violation of N.D.C.C. § 39-08-18, the open container law. As a result of this statutory enactment, all violations of N.D.C.C. § 39-08-18 will be cited into juvenile court rather than county court. The juvenile court has exclusive original jurisdiction over a child who has committed an offense in violation of N.D.C.C. § 39-08-18.

N.D.C.C. § 27-20-02(10)(e) provides:

10. "Unruly child" means a child who:

....

e. Has committed an offense in violation of section 39-08-18;
and

The language of N.D.C.C. § 27-20-02(10)(e) does not specifically refer to violations of equivalent municipal ordinances pertaining to an open bottle law. Where the language of a statute is plain and unambiguous, the statute must be given effect according to its plain and obvious meaning. Rausch v. Nelson, 134 N.W.2d 519

(N.D.1965). However, where the language of a statute is of doubtful meaning or if adherence to the strict letter of the statute would lead to injustice, to absurdity, or to contradictory provisions, it is necessary to ascertain the true meaning of that statute. Rybnicek v. City of Mandan, 93 N.W.2d 650 (N.D.1959).

Although N.D.C.C. § 27-20-02(10)(e) does not contain the language "or equivalent ordinance" after the citation to N.D.C.C. § 39-08-18, this does not end the inquiry as to the scope and application of that provision. This statutory provision discloses apparent conflicts both as to jurisdiction of the juvenile and municipal courts as well as its actual application. If a child is cited for violation of N.D.C.C. § 39-08-18, that child will be considered to be an "unruly child" subject to the exclusive and original jurisdiction of the juvenile court. However, if municipal ordinances equivalent to N.D.C.C. § 39-08-18 are not within the juvenile court jurisdiction, the child cited for that municipal ordinance violation would be subject to the jurisdiction of the municipal court as are adults and those persons under the age of 18 years who do not come within the definition of a "child" in N.D.C.C. § 27-20-02(1).

In addition, it is apparent that if the provisions of N.D.C.C. § 27-20-02(10)(e) do not apply to a child cited for a municipal ordinance open bottle violation, that child will not be subject to the procedures and benefits otherwise provided to those children cited in juvenile court for a violation of N.D.C.C. § 39-08-18. If a child is declared to be unruly under N.D.C.C. ch. 27-20, the juvenile court has many options available to it in the disposition of that child's case including treatment and rehabilitation otherwise not available to a child cited under a municipal ordinance violation for that same basic offense. See N.D.C.C. § 27-20-32.

A child subject to N.D.C.C. ch. 27-20 would also receive the benefit of the confidentiality of records of that violation where no such confidentiality would be present for a municipal ordinance violation. The amendment to N.D.C.C. § 27-20-02(10)(e) also removes an open bottle violation from being considered to be a "delinquent act" by classifying the violator only as a "unruly child." A child cited in municipal court for an ordinance violation for an offense identical to N.D.C.C. § 39-08-18 would not have the benefit of this "unruly child" classification but would be treated on the records of the municipal court as any other municipal ordinance violator.

It is also apparent that nonapplication of municipal open bottle ordinance violations to the juvenile court act proceedings would result in a determination of court jurisdiction over an open bottle violation within a city as dependent not upon a legislative act but upon a decision of the charging agency or person as to whether the child would be cited for the open bottle violation under state law or

municipal ordinance. This charging decision could subject children who are similarly situated to differing dispositions, proceedings, and benefits which may otherwise be authorized by state law or to abusive or discriminatory enforcement of the open bottle law provisions. Literal interpretation of N.D.C.C. § 27-20-02(10)(e) limiting juvenile court jurisdiction to only those offenses arising under N.D.C.C. § 39-08-18 and not under equivalent municipal ordinances would cause an unjust, absurd, and unreasonable result. This result causes an ambiguity to arise calling for construction and interpretation of the statutory provision. The statutes must be construed to avoid absurd results and if adherence to the strict letter of the statute would lead to such a result, extrinsic aids may be utilized to interpret the statute. *Olmstead v. Miller*, 383 N.W.2d 817 (N.D.1986).

Statutes must be liberally construed with a view to effecting their objective. *State for the Use and Benefit of First American Bank and Trust Co. v. General Ins. Co. of America*, 179 N.W.2d 123 (N.D.1970). In addition, a statute must be construed to fulfill the intent of the legislature. *Larson v. Wells County Water Resource Brd.*, 385 N.W.2d 480 (N.D.1986).

It is also presumed in enacting a statute that the Legislature intended a just and reasonable result and a result feasible of execution. N.D.C.C. § 1-02-38.

Applying these basic principles, it is my conclusion that N.D.C.C. § 27-20-02(10)(e) applies to a municipal ordinance violation which is equivalent to N.D.C.C. § 39-08-18 when such violation is alleged to have been committed by a "child" as defined in N.D.C.C. § 27-20-02(1).

The legislative history to Senate Bill No. 2443 discloses the intent that the juvenile court have jurisdiction and authority over children who have committed open bottle law violations. Testimony presented before both the Senate and House Committees discloses that the amendment to N.D.C.C. § 27-20-02(10)(e) would provide additional services, including treatment, to children who have committed alcohol related offenses. These services may not be available in other courts, including municipal courts. In addition, presence of children within the juvenile court system would assist in early identification, evaluation, and treatment of drug and alcohol problems of those children.

Senate Bill No. 2404, which was also adopted by the 1987 Legislative Session, amended the provisions of N.D.C.C. § 27-20-02(9) by excepting the offenses of driving or being in actual physical control of a vehicle in violation of N.D.C.C. § 39-08-01 or an equivalent ordinance from the definition of "traffic offense." By this amendment, a child who commits a violation of N.D.C.C. §

39-08-01 will be subject to the exclusive and original jurisdiction of a juvenile court and no longer prosecuted in either municipal or county court for those offenses. An examination of the legislative history to Senate Bill 2404 discloses virtually identical testimony as that presented for Senate Bill 2443, such testimony relating to the desire to divert children who have committed alcohol related offenses to the juvenile court system to provide more alternatives and assistance for treatment and rehabilitation of potential drug or alcohol problems. The close correlation between these bills was also shown by the fact that the House Judiciary Committee held hearings on both bills on the same date and at the same time.

It is clear that the objective and intent of the 1987 Legislature was to vest the juvenile court with exclusive and original jurisdiction over all open bottle violations by a child to provide that child with the benefits of the expanded identification, treatment, and rehabilitation services within that system. This objective and intent of the Legislature would be defeated by excluding from the exclusive and original jurisdiction of the juvenile court all municipal open bottle ordinance violations equivalent to N.D.C.C. § 39-08-18. To avoid an absurd, ludicrous, and unjust result, the intent and objectives of the Legislature can be effected only by concluding that N.D.C.C. § 27-20-02(10)(e) also includes municipal ordinance open bottle violations which are equivalent to N.D.C.C. § 39-08-18 when such violation is alleged to have been committed by a "child" as defined in N.D.C.C. § 27-20-02(1).

--EFFECT--

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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