

OPINION
59-201

March 3, 1959 (OPINION)

MUNICIPAL GOVERNMENT

RE: Powers of Municipalities - Curfew Ordinances

This is in reply to your letter of February 25, 1959, in which you state the following facts:

The city council passed a curfew ordinance, which provides among other things that minors under eighteen shall not ride in cars after 10:30 p.m. unless certain conditions are met. It further provides that our police may arrest the violator without a warrant. It was later amended to provide that the parent of the minor who violates this ordinance shall also be guilty of violating this ordinance."

You further state that a girl who goes to school in Oakes but lives in another county is said to have violated this ordinance. Your question is: Can the ordinance be enforced against her parents?

There appear to be few cases in which the legality of curfew ordinances of this type has been decided. In *Ex parte McCarver*, 39 Tex. Cr. R. 448, 46 S.W. 936 the ordinance was held to be unreasonable and void. In *people v. Walton*, 70 Ca. App. 2d. Supp. 862, 161 P. 2d. 498, the ordinance was upheld as valid. The most recent case, *Alves v. Justice Court of Chico Judicial District*, 306 P. 2d. 601 decided in 1957, holds the curfew ordinance is unconstitutional. Evidently if the ordinance is reasonable and carefully drawn it will be upheld as a valid exercise of the police power upon the grounds that minors constitute a class founded upon a natural and intrinsic distinction from adults and that legislation peculiarly applicable to them is necessary for their proper protection.

The enforcement of the ordinance against the parents of a minor who violates the ordinance when such parents live without the territorial limits of the municipality gives rise to the question of jurisdiction. While we can find no statutory or case law directly in point, it would appear that such an ordinance would be binding upon nonresident parents only if they are within the corporate limits of the municipality at the time their minor child violates the ordinance. See 5 McQuillin, MUNICIPAL CORPORATIONS 123, section 15.28 (3rd. Ed.)

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