

**OPINION
60-18**

October 11, 1960 (OPINION)

ALCOHOLIC BEVERAGES

RE: Minors - Possession - Automobiles

This is in reply to your letter of September 15, 1960, in regard to the interpretation and application of Chapter 100 of the 1959 Session Laws and the provision of Section 1 thereof to the effect that: "It shall be unlawful for any person under the age of twenty-one (21) years to purchase or attempt to purchase or have in his or her possession in this state any intoxicating liquor as defined by section 5-0506 of the 1957 Supplement to the North Dakota Revised Code of 1943."

You ask for clarification of same for more efficient enforcement, mentioning the instances where an officer discovers alcohol in an automobile occupied by more than one minor, not in the physical possession of any one individual but located in the glove compartment, underneath the seat or in the trunk of the automobile. You ask whether in such circumstances it is proper to act on the basis that all of the minors in the automobile are in possession of the beverage, or on the basis that only the owner or possessor of the automobile is in possession of the alcoholic beverage.

As you undoubtedly recognize, there has not been a great deal of litigation on this type of statute before the Supreme Court of this or other states. We note the following rather general statement at 30 Am. Jur. 571, Intoxicating Liquors, Section 59:

WHAT CONSTITUTES POSSESSION. While the 'possession' of intoxicating liquors within the meaning of statutes making possession unlawful is usually defined as 'having personal charge of or exercising the right of ownership, management, or control over' the liquor in question, there need not necessarily be an actual manucaption of the liquor; nor is it necessary that it be actually upon the person of the accused, though there must be a conscious and substantial possession by the accused, as distinguished from a merely involuntary or superficial possession"

We do note several decisions of the Supreme Court of this state in regard to illegal possession of alcoholic beverages which at least seem to indicate that the possession there referred to is conscious possession of, or some responsibility for the presence of the liquor where found. (SEE: State v. Gates, 52 N.D. 659, 204 N.W. 350; State v. Alton, 54 N.D. 127, 208 N.W. 835; State v. Grams, 65 N.D. 400, 259 N.W. 86).

The statute here concerned is, of course, based on a different statute than the one there concerned.

More in the present-day field we find correspondence of this office in regard to the operation of the open bottle law. We note the expression of one letter to the effect that even though riding in an automobile driven and controlled by another it is possible for a person to be in possession of an open bottle, that the driver of the automobile is in no position to control, own, etc. Also, I note the expression of the thought that it is possible that a passenger in an automobile would not (1) drink or have drunk any beer, alcohol, or alcoholic beverages, while in the automobile, (2) that said passenger would not have in his possession on his person, while in an automobile, truck, or bus any bottle or receptacle, containing beer, alcohol or alcoholic beverage, and (3) that said passenger would not be keeping in the automobile, truck, or bus, any bottle or receptacle, containing beer, alcohol or alcoholic beverages, even though the driver of the vehicle was guilty of all three offenses.

In regard to your specific question, it would be our thought that where an officer discovers alcohol in an automobile occupied by more than one minor, not in the physical possession of any one individual but located or secreted somewhere in the automobile the legal responsibility of any individual member of the group must necessarily be determined on the basis of at least knowledge of the presence of the beverage concerned, and possibly some degree of responsibility for its being there. Probably finding of the liquor in the vehicle would make out a prima facie case against the person having custody and control of the vehicle. However, if the beverage were concealed, it is our thought that further investigation would be necessary to determine whether or not other passengers were in any way guilty of a violation.

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