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FILE NO. S-803

**CRIMINAL LAW:
Juvenile Court Act**

Honorable Dale A. Allison, Jr.
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Mt. Carmel, Illinois 62863

Dear Mr. Allison:

I have your letter wherein you state in part:

"A basic review of the facts would indicate that on a Saturday night police officers of the City of Mt. Carmel arrested 4 juveniles for possession of cannabis. At that time the juveniles were written non-traffic tickets. These tickets were taken to the Circuit Clerk's Office on the following Monday. The news media acquired the names of the juveniles and published the same in the local paper and their names were given on the local radio station. I used nulle prosequi on the tickets and filed other juvenile proceedings.

Therefore, our questions are as follows:

Since Chapter 37, Section 702-7, Paragraph 1 prohibits the prosecution of minors

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under the age of 17 years under the criminal laws of this State or for violation of an Ordinance which, when read with paragraph 2, would indicate that the only criminal violation they could be charged with would be that which was punishable by fine only. Do you interpret that Section to mean that the police may not write non-traffic tickets for criminal offenses, or is that interpretation only that the State may not prosecute those tickets?

Secondly, in the same Chapter, Section 702-10 reads, 'That the official court file and other files containing any memorandum or report and any transcript of testimony in proceedings under this Act shall be impounded and shall not be made available to the general public but may be inspected by representatives of agencies, associations, and news media or other properly interested persons by general or special order of the Court'. Do you interpret this to mean that the news media can only inspect those files upon a general or special order of Court, or are they allowed to inspect the files without a general or special order of the Court so that the general or special order of the Court only applies to the 'other properly interested persons', and if, upon their inspection, is there any restriction upon the news media that can be made by the Court or the State's Attorney with regard to their publishing the names of the minors so involved?

And further, Section 702-8 of the same Chapter, sub-paragraph 3 states, 'That the records of law enforcement officers concerning all minors under 17 years of age must be maintained separate from the records of arrest and

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may not be open to public inspection or the contents disclosed to the public except by order of the Court.....' Is it your interpretation that a non-traffic complaint is considered a record of law enforcement officers that cannot be filed with the Circuit Clerk of the Court, or if filed, not be available for inspection?"

In regard to your first question, sections 2-7(1) and 2-7(2) of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, pars. 702-7(1), 702-7(2)) provide:

"Except as provided in this Section, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State or for violation of an ordinance of any political subdivision thereof.

(2) Subject to paragraph (1) of Section 2-8, any minor alleged to have committed a traffic, boating or fish and game law violation or an offense punishable by fine only may be prosecuted therefor and if found guilty punished under any statute or ordinance relating thereto, without reference to the procedures set out in this Act."

Under the above cited language, it is clear that no minor under 17 years of age at the time of the alleged offense may be prosecuted for certain offenses with the exceptions enumerated in said Act. The question is whether the writing of non-traffic tickets constitutes the commencement of prosecution.

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Section 111-1 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch. 38, par. 111-1) provides:

"When authorized by law a prosecution may be commenced by:

- (a) A complaint;
- (b) An information;
- (c) An indictment."

It is my understanding that the non-traffic ticket, to which your letter makes reference, is a non-traffic complaint form used by the local police department and contains the offender's name, the alleged violation, and the appearance date. Since the writing of such a non-traffic ticket would not appear to rise to the level of an information or an indictment, the question is whether a non-traffic ticket is a complaint so that the writing of such a ticket would constitute a commencement of prosecution which is prohibited by section 2-7 of the Juvenile Court Act, supra.

Section 102-9 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch. 38, par. 102-9) provides:

"'Complaint' means a verified written statement other than an information or an indictment, presented to a court, which charges the commission of an offense."

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Section 111-3(b) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1973, ch. 38, par. 111-3(b)) provides in part:

"A complaint shall be sworn to and signed by the complainant."

As your letter indicates, while such tickets were written subsequent to taking the juveniles into custody, there is no indication that the tickets were verified or sworn to as required by sections 102-9 and 111-3(b) of the Code of Criminal Procedure of 1963, supra. If the tickets were not so verified or sworn to, then it is my opinion that such tickets would not be complaints within the meaning of section 111-1 of the Code of Criminal Procedure of 1963, supra, and the issuance thereof would not constitute the commencement of prosecution so as to be prohibited by section 2-7 of the Juvenile Court Act, supra. These tickets may well have constituted notices to appear as defined in section 107-12 of the Code of Criminal Procedure of 1963, supra. If the tickets were notices to appear, they would not have the effect of commencing prosecution.

However, the facts set forth in your letter also indicate that these tickets were taken to the circuit clerk's

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office. It is not clear for what purpose they were used by the clerk's office. If the tickets were used as a sworn and verified complaint, and are so used as a matter of practice in your county, such use would clearly be a commencement of prosecution which is clearly prohibited by section 2-7 of the Juvenile Court Act, supra.

It should be noted that, in any event, the mere writing of such unsworn and unverified tickets in regard to juveniles is of no effect. The proper manner in which to proceed in regard to a juvenile is specifically set forth in the Juvenile Court Act. (Ill. Rev. Stat. 1973, ch. 37, par. 701.1 et seq.) A law enforcement officer may, with a warrant issued pursuant to a petition in respect of a minor, take a minor into custody or, without a warrant, take a minor into temporary custody. (Ill. Rev. Stat. 1973, ch. 37, par. 703-1.) If a minor is taken into custody without a warrant, the officer is under a duty to surrender the minor to a juvenile police officer and, if not released, the minor must be delivered to the court. (Ill. Rev. Stat. 1973, ch. 37, par. 703-2.) Thus, the mere writing of a ticket would not be in accord with the specific procedures set forth in the Juvenile Court Act.

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In regard to your second question, section 2-10 of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 702-10) provides in pertinent part:

"The official court file and other files containing any memorandum or report and any transcript of testimony in proceedings under this Act shall be impounded and shall not be made available to the general public but may be inspected by representatives of agencies, associations and news media or other properly interested persons by general or special order of court."

It is my opinion, for the reasons which follow, that the requirement of a court order for inspection of the records applies to "representatives of agencies, associations, and news media" as well as to "other properly interested persons". First, a cardinal rule in statutory construction is that a statute must be construed so as to ascertain and give effect to the intention of the General Assembly. (People ex rel. Toman v. Chicago Western R. Co., 379 Ill. 594; People ex rel. Kucharski v. Adams, 48 Ill. 2d 540.) Although punctuation in a statute is not of controlling weight, it is helpful in construing statutes and should be considered and given weight in ascertaining the legislative intent. (Smith v. Logan County, 284 Ill. 163; Illinois

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Bell Telephone Co. v. Ames, 364 Ill. 362.) The language "other properly interested persons by general or special order of court" is not separated from the other categories by a semicolon or other punctuation such as to indicate a legislative intent that the requirement of a court order should only apply to "other interested persons".

Secondly, there would appear to be no reason to treat representatives of agencies, associations, and news media differently in regard to the court order requirement. Consequently, in answer to your specific question, it is my opinion that representatives of the news media can only inspect the court files upon general or special order of the court.

In regard to whether, upon inspection, there are any restrictions which the State's Attorney or a court could place upon the news media's publications concerning the files, the general policy in Illinois in regard to court records is reflected by section 16 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1973, ch. 25, par. 16) which provides in pertinent part:

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"All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward. And all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto."

However, section 2-10 of the Juvenile Court Act, supra, reflects an exception to the general policy of public inspection.

Opinion No. 8-645, to which your letter makes reference, dealt only with the question of whether members of the news media who are in attendance at juvenile court proceedings pursuant to section 1-20(6) of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 701-20(6)) could be prevented from reporting what they saw or heard at such proceedings. Since the question raised by your letter concerns the court files, and restrictions on the publication thereof, rather than information gathered at the court proceeding itself, the above cited opinion is not controlling.

The answer to your question as to whether the State's Attorney has any power to impose restrictions upon the publi-

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cation of the names of minors involved in juvenile court proceedings is in the negative. I know of no basis for any such authority in the State's Attorney.

In regard to a court's power to impose restrictions upon the publication of the names, when gathered from court files, of minors involved in juvenile court proceedings, it would not be proper to express an opinion in the absence of specific facts. This issue is primarily a matter for court determination in the context of the specific factual setting of an actual case.

In regard to your third question, it is my opinion that a non-traffic ticket is a record of law enforcement officers within the meaning of section 2-8(3) of the Juvenile Court Act (Ill. Rev. Stat. 1973, ch. 37, par. 702-8(3)). That section of said Act provides:

"The records of law enforcement officers concerning all minors under 17 years of age must be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court or when the institution of criminal proceedings has been permitted under Section 2-7 or such a person has been convicted of a crime and is the subject of pre-sentence investigation or proceedings on an application for probation."

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There have been no cases interpreting the language "records of law enforcement officers". However, in view of the Act's underlying policy of confidentiality of juvenile records, it can be inferred that the legislative intent was that the phrase have a broad meaning. Moreover, it is my understanding that the non-traffic ticket is used primarily as an administrative record by the local police officials. Thus, it is my opinion that a non-traffic ticket is a record of law enforcement officers within the meaning of section 2-8(3) of the Juvenile Court Act, supra, so that it must be maintained separate from the records of arrest and may not be open to public inspection except by order of the court.

Very truly yours,

A T T O R N E Y G E N E R A L