CHILD:
JUVENILE COURT:
JUVENILES:
MAGISTRATE COURT:
POLICE COURT:

Pursuant to Section 211.06 (2) RSMo 1959, a magistrate or police judge must forthwith transfer the case or refer the matter of an individual between 17 and 21 years of age charged with the violation of a state law or a municipal ordinance committed by said individual after he attained 17 years of age, to the juvenile court, if the juvenile court had obtained exclusive original jurisdiction of said individual under Section 211.031 RSMo 1959, prior to his seventeenth birthday, and had placed said individual on probation.

November 7, 1961

Honorable Lon J. Levvis
Prosecuting Attorney
Audrain County - Courthouse
Mexico, Missouri

Dear Mr. Levvis:

This is in reply to your opinion request of September 26, 1961, wherein you state:

> "I wish that you would please let me have your opinion on the following question. Assuming that in proceedings in the juvenile court of a county of the third class a child under seventeen years of age has been found guilty of having committed an offense against the law and has been returned or committed, under supervision, to the custody of his parents, and that while he was under such supervision said child had become seventeen years of age, and that he is alleged to have committed another offense, namely, a traffic violation, while of that age and has been arrested and brought before the magistrate court of said county, may such later offense be prosecuted in the magistrate court or must that court, under the provisions of section 211.061, transfer that case to the juvenile court?"

Section 211.061(2) RSMo 1959, directs a magistrate or police judge to transfer or refer an individual's case to the juvenile court in two instances. Said section reads as follows:

"If any person is taken before a magistrate or police judge of another court, and it is then, or at any time thereafter, ascertained that he was under the age of seventeen years at the time he is alleged to have committed the offense, or that he is subject to the jurisdiction of the juvenile court as provided by sections 211.011 to 211.431, it is the duty of the magistrate or judge forthwith to transfer the case or refer the matter to the juvenile court, and direct the delivery of such person, together with information concerning him and the personal property found in his possession, to the juvenile officer or person acting as such. The juvenile court shall proceed as in other cases instituted under sections 211.011 to 211.431."

Since the individual in question has committed the traffic offense, for which he was charged in magistrate court, after he became seventeen years of age, his cause could be transferred or referred to juvenile court by the magistrate only if he was subject to the jurisdiction of the juvenile court as provided by Sections 211.011 to 211.431, RSMo 1959.

From the facts as outlined in your letter, the juvenile court obtained exclusive jurisdiction over the individual while he was under seventeen years of age by finding him guilty of having committed an offense against the law of Missouri. This exclusive jurisdiction is set forth in Section 211.031 (1) (d), which states:

"Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:

"(1) Involving any child who may be within the county who is alleged to be in need of care and treatment because: . . . . .

"(d) The child is alleged to have violated a state law or a municipal ordinance; . . . . ."

In addition thereto, by statute, the juvenile court not only acquires jurisdiction of the child under the provisions of Sections 211.011 to 211.431, RSMo 1959, but also may retain said jurisdiction over the individual until

he has attained the age of twenty-one years, except where the individual has been committed to and received by the state board of training schools. Said Section 211.041, RSMo 1959, states:

> "When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of sections 211.011 to 211.431 in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of sections 211.011 to 211.431 until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools."

Since the language of Section 211.041, RSMo 1959, empowering the juvenile court to retain jurisdiction of a child until he attains the age of twenty-one years, is permissive, the juvenile court must in some manner indicate its intention to retain this jurisdiction.

On July 8, 1959, this office, in an official opinion to Dr. Addison M. Duval, Director of the Division of Mental Diseases, concerning the jurisdiction of the juvenile court under Section 211.041, RSMo 1959, stated at page 2 thereof:

> ". . . in view of the permissive language of Section 211.041, supra, the court's order disposing of the child must affirmatively show an intention to retain jurisdiction of a child either by express language or necessary inference if, in fact, the court does intend for its jurisdiction to continue."

In the present case, the juvenile court has clearly indicated its intention to retain jurisdiction over this particular individual until he attained the age of twenty-one years by placing him on probation and releasing him to the custody of his parents. Therefore, the magistrate judge would be obliged to transfer this case or refer the matter to juvenile court under Section 211.061(2), RSMo 1959, even though the violation occurred after said individual had reached his seventeenth birthday, because: "he is subject to the jurisdiction of the juvenile court as provided by sections 211.011 to 211.431 . . ."

It is to be noted, however, that Section 211.071, RSMo 1959, gives the juvenile court the power in this type

of case to dismiss the referred matter in juvenile court and allow the individual to be prosecuted under the general laws of the state.

## CONCLUSION

It is the opinion of this office that pursuant to Section 211.061(2), RSMo 1959, a magistrate or police judge must forthwith transfer the case or refer the matter of an individual between 17 and 21 years of age charged with the violation of a state law or a municipal ordinance committed by said individual after he attained seventeen years of age, to the juvenile court, if the juvenile court had obtained exclusive original jurisdiction of said individual under Section 211.031, RSMo 1959, prior to his seventeenth birthday, and had placed said individual on probation.

The foregoing opinion, which I hereby approve, was prepared by my assistant George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD:lc