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Honorable Keith Norman
Alabama State Bar
Office of General Counsel
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Juvenile Delinquency - Crimes and
Offenses

Juvenile delinquency proceedings are encompassed within the meaning of the "criminal offense of any kind or character" provided in section 12-17-195 of the Code of Alabama and the "criminal cases of any character, kind, or description" provided in section 12-17-196, which prohibit a district attorney and the partners of an assistant district attorney from defending clients in juvenile delinquency proceedings.

Dear Mr. Norman:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama State Bar.

QUESTION

Whether juvenile delinquency constitutes a "criminal offense" or a "criminal case" within the meaning of section 12-17-195 of the Code of Alabama, which prohibits a district attorney from defending anyone charged with a "criminal offense" and section 12-17-196 of the Code, which prohibits a law partner of an assistant district attorney from defending "criminal cases?"

FACTS AND ANALYSIS

Pertinent portions of the letter from Attorney Gail Meek, attached to your request for a legal opinion, provide:

I am writing for an advisory opinion regarding my situation. I am a part-time Assistant District Attorney (ADA) in Lee County. I handle felony cases only. I am also in association with two other attorneys who are not ADAs. The other two attorneys have a contract with Lee County Juvenile Court to provide services as guardians ad litem for cases involving children who are dependent, CHINS and delinquent. My questions center around the definition of "crime" as it relates to juvenile delinquency.

* * * *

I was under the impression that juvenile delinquency, by definition, was NOT a crime. The child is alleged (not charged) to be delinquent (a status, not an act) by use of a petition (not a warrant or indictment). He appears before the court as a child (not a defendant). After the hearing (not a trial), he is found to be delinquent (rather than guilty or not guilty), and he has a disposition (not a sentence) for an indefinite time.

There is extensive support, provided by the Alabama Legislature in several statutes and interpretations provided by the appellate courts of our state, for the position that the Legislature did not intend that adjudication of delinquency be interpreted or treated as convictions. The major statute that illustrates this position is section 12-15-72(a) of the Code of the Alabama. That section provides:

(a) An order of disposition or other adjudication in proceedings under subsection (a) of Section 12-15-30 shall not be considered to be a conviction or impose any civil disabilities ordinarily resulting from a conviction of a crime or operate to disqualify the child in any civil service application or appointment.

ALA. CODE § 12-15-72(a)(1995). This statute has been relied upon to determine, for example, that: juvenile offenders are excluded from the restriction provisions of section 15-18-68 of the Code of Alabama (*see D.J.W. v. State*, 705 So. 2d 521 (Ala. Crim. App. 1997); juveniles cannot benefit from sentencing

statute (section 15-18-5 of the Code of Alabama) regarding credit for time served (*see Ex parte S.F.R.*, 598 So. 2d 1006 (Ala. 1992); juvenile court in transfer proceeding limited to determining probable cause concerning specific acts rather than a determination of the commission of a criminal offense prohibited by the double jeopardy clause (*see Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975) and *D.D.A. v. State*, 650 So. 2d 571 (Ala. Crim. App. 1994); and juvenile adjudications may not be used to impeach an adult defendant (*see Gamble's Alabama Rules of Evidence* 609(d)).

Section 12-15-30 notwithstanding, the crucial wording of sections 12-17-195 and 12-17-196 suggests a broader intent by the Alabama Legislature in considering the question put. Specifically, sections 12-17-195 and 12-17-196 of the Code of Alabama provide:

Any assistant district attorney who acts as attorney for, represents or defends any defendant charged with a ***criminal offense of any kind or character in any court, state, municipal or federal, in this state***, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100.00 nor more than \$1,000.00.

ALA. CODE § 12-17-195 (1995).

Any law partner or partners of any district attorney or assistant district attorney of this state who defend ***criminal cases of any character, kind or description in any court in this state*** in which said district attorney or assistant district attorney is the prosecuting officer shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00.

ALA. CODE § 12-17-196 (1995).

The Supreme Court of Alabama has held that "[t]he fundamental rule to be applied on construing any statute is . . . to ascertain and effectuate the legislative intent as expressed in the statute. This intent may be discerned from the language used, the reason and necessity for the act, and the goal sought to be obtained." *Gholston v. State*, 620 So. 2d 719, 721 (Ala. 1993). There is significant support for a finding that the "character" and "kind" wording used in these two statutes encompasses a general reference to juvenile adjudication. Some examples include: the reference in section 12-21-300(a) of the Code to "any criminal case, or juvenile, or family court which is of a ***criminal nature***;" the reference in section 15-20-30(a) to a "juvenile criminal sex offender;" and the

reference in section 12-25-2(a)(2) to "an efficient sentencing system for Alabama adult and juvenile criminal offenders." Moreover, the Alabama Court of Criminal Appeals has held in *J.W. v. State* that "[t]he purpose of Rule 11, Ala.R.Juv.P., as identified in the comment following the rule, is to clarify a child's rights at different phases of a *criminal case*." *J.W. v. State*, 751 So. 2d 529, 531 (Ala. Crim. App. 1999) (emphasis added).

It appears, based upon the language utilized in sections 12-17-195 and 12-17-196 of the Code, that the reason, necessity, and goal of these statutory provisions centers on the protection of the constitutional rights of the juvenile in a case of a criminal nature and the prevention of state prosecutors from representing private parties whose interests are adverse to the State of Alabama, to the extent of imposing a criminal sanction on the prosecutor or a law partner thereto for a violation. The necessity for the application of these provisions to juvenile proceedings is evident on occasions in which, for example, a part-time prosecutor would serve as a defense counsel during transfer proceedings pursuant to sections 12-15-34 and 12-15-34.1 or discretionary transfers pursuant to sections 12-15-30(a)(2) and 12-15-33(b).


CONCLUSION

Juvenile delinquency proceedings are encompassed within the meaning of the "criminal offense of any kind or character" provided in section 12-17-195 of the Code of Alabama and the "criminal cases of any character, kind, or description" provided in section 12-17-196, which prohibit a district attorney and the partners of an assistant district attorney from defending clients in juvenile delinquency proceedings.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Tori Adams-Burks of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division