

ALCOHOLIC BEVERAGE POSSESSION - Rights of youths charged in justice, municipal, or city court for violation of section 45-5-624, MCA;

CITY COURT - Rights of youths charged in city court for violation of section 45-5-624, MCA;

JUSTICE COURT - Rights of youths charged in justice court for violation of section 45-5-624, MCA;

MUNICIPAL COURT - Rights of youths charged in municipal court for violation of section 45-5-624, MCA;

YOUTH COURT ACT - Rights of youths charged in justice, municipal, or city court for violation of section 45-5-624, MCA;

YOUTHS - Rights of youths charged in justice, municipal, or city court for violation of section 45-5-624, MCA;

MONTANA CODE ANNOTATED - Sections 41-5-203, 41-5-303 to 41-5-307, 41-5-402, 41-5-501, 41-5-511, 41-5-601, 41-5-602, 41-5-604, 45-5-624, 46-6-301, 46-8-111;

UNITED STATES CONSTITUTION - Amendment XIV.

HELD: The provisions of the Montana Youth Court Act which apply to a youth charged with violation of section 45-5-624, MCA, in justice, municipal, or city court proceedings are sections 41-5-303 to 307, 41-5-402, 41-5-601(1), 41-5-602 and 41-5-604, MCA. A youth charged with violation of section 45-5-624, MCA, is further entitled to the following rights in addition to those normally accorded defendants in justice, municipal, or city court criminal proceedings: (1) service of the criminal summons upon both the youth and a custodial parent or guardian; (2) advisement of the right to retained or, if appropriate, appointed counsel; and (3) waiver of the right to counsel only by both the youth and a custodial parent or guardian.

22 March 1984

R. L. "Stoney" Burk
Deputy City Attorney
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and Choteau
P.O. Box 70
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Dear Mr. Burk:

You have requested my opinion concerning the following questions:

When a youth under the age of 18 is charged with violation of section 45-5-624, MCA, by complaint filed in justice, municipal, or city court rather than youth court, do all the provisions of the Youth Court Act apply? If not, which provisions do apply?

Your questions require construction of the Youth Court Act (the Act), §§ 41-5-101 to 807 MCA, and interpretation of Edward C. v. Collings, 38 St. Rptr. 1240, 632 P.2d 325 (1981). As I discuss below, many provisions of the Act have application to youths irrespective of whether formal proceedings have been commenced in youth court, while other provisions have specific reference to youth court matters. Edward C. is relevant only to the latter provisions' applicability in justice, municipal, or city court proceedings under section 45-5-624, MCA, for illegal possession of alcoholic beverages.

Section 41-5-303, MCA, of the Act sets forth a youth's rights when detained "for investigation or questioning upon a matter which could result in a petition alleging that the youth being detained is either delinquent or in need of supervision." That provision clearly applies to interrogation concerning possible violation of section 45-5-624, MCA, which, as indicated by section 41-5-203, MCA, can result in proceedings before the youth court. A similar conclusion is warranted as to sections 41-5-304 to 307, MCA, since they pertain to the rights of youths generally and without reference to the actual commencement of youth court proceedings under section 41-5-501, MCA. The communications privilege under section 41-5-402, MCA, also applies to all proceedings, including those which may be initiated for alleged violation of section 45-5-624, MCA, in justice, municipal, or city court.

Other provisions generally applicable to youths without reference to youth court proceedings are sections 41-5-601(1), 41-5-602 and 41-5-604, MCA. Section 41-5-601(1), MCA, prohibits, inter alia, giving publicity to the identity of any arrested youth except

in specified circumstances; section 41-5-602, MCA, prohibits public inspection of "law enforcement records;" and section 41-5-604, MCA, provides for the sealing of "the legal and social files ... of the ... probation services[] and law enforcement agencies pertaining to a youth coming under this chapter ... when the youth reaches the age of 18 years," excluding traffic records or those records relating to offenses for which publicity is authorized under section 41-5-601(2), MCA. The term "law enforcement records" is not defined but appears to refer to the records of law enforcement agencies in the actual possession of such agencies and to include copies of such records which have been disseminated to courts for use in proceedings alleging violation of section 45-5-624, MCA.

The issue of which provisions of the Act facially applicable only to the youth court have significance to proceedings in justice, municipal, or city courts for violation of section 45-5-624, MCA, turns on the breadth of the reasoning in Edward C. v. Collings, supra. The question in that decision was whether a minor had effectively waived his constitutional right to counsel. In holding that such right had not been waived, the Court incorporated into justice court proceedings under section 45-5-624, MCA, the substantive protection of section 41-5-511, MCA, requiring consent by both the youth and a custodial parent to waiver of the right to counsel. While the result in Edward C. was premised on the Court's conclusion that the Legislature intended the rights accorded in section 41-5-511, MCA, to apply to alcoholic beverage possession proceedings in justice court, State ex rel. Maier v. City Court of City of Billings, 39 St. Rptr. 1560, 662 P.2d 276 (1982), on reh'g, 40 St. Rptr. 560, 662 P.2d 279 (1983), distinguished the earlier decision on constitutional grounds and concluded that a minor charged with a traffic offense was not entitled to representation by counsel as a fundamental right because incarceration was not possible. 40 St. Rptr. at 563, 662 P.2d at 281. Thus Edward C. is properly construed, in light of Maier, as extending to a youth in justice, municipal, and city court proceedings under section 45-5-624, MCA, only those constitutional, or "fundamental," rights protected under the Act. This reading of Edward C. comports with its actual holding which involved only extension of a constitutionally-protected right in juvenile proceedings to prosecutions under section 45-5-624, MCA.

Edward C. did not detail all constitutional rights protected under the Act which must be accorded youths in justice, municipal, or city court proceedings for alleged violation of section 45-5-624, MCA. Nonetheless, it is well established that youths have certain fundamental due process rights in juvenile proceedings where loss of personal freedom is possible. These rights include timely notice of the charge and the right to counsel to the youth and a custodial parent or guardian; the availability of appointed counsel, if indigent; the opportunity to confront and cross-examine witnesses; the privilege against self-incrimination; and the requirement that material offense allegations be proven beyond a reasonable doubt. See In re Gault, 387 U.S. 1 (1967); In re Winship, 397 U.S. 358 (1970); Fare v. Michael C., 442 U.S. 707 (1979).

The fundamental rights of youths in juvenile proceedings are generally consistent with defendants' rights in justice, municipal, and city court proceedings for alleged violation of section 45-5-624, MCA. There are, however, two fundamental rights, in addition to the parental waiver right accorded in Edward C., which exist under the Act and are otherwise mandated in juvenile proceedings where loss of personal freedom is possible: (1) the right to have a notice of charges served on both the youth and a custodial parent or guardian, and (2) the right to appointed counsel if indigent. Accordingly, service of the summons in justice, municipal, or city court proceedings alleging violation of section 45-5-624, MCA, must be made both on the youth and a custodial parent or guardian in accordance with section 46-6-301(2), MCA, and the youth must be informed of his right to appointed counsel if otherwise financially eligible under section 46-8-111, MCA. With these modifications, the procedures generally applicable to criminal proceedings in justice, municipal, and city courts extend to youths charged with violation of section 45-5-624, MCA.

In conclusion, the substantive provisions of the Act which apply generally to youths and without reference to the commencement of youth court proceedings are sections 41-5-303 to 307, 41-5-402, 41-5-601(1), 41-5-602 and 41-5-604, MCA. The remaining provisions of the Act apply only to youth court proceedings or records. To the extent provisions of the Act apply generally, they are relevant to justice, municipal, and city court

proceedings for alleged violation of section 45-5-624, MCA. There are, however, certain due process rights under the Fourteenth Amendment of the United States Constitution particularly associated with juvenile proceedings, and those rights must be honored by justice, municipal, and city courts in the exercise of their concurrent jurisdiction over alcohol beverage possession violations. Those rights are, with certain exceptions, in accord with the procedures ordinarily applicable in justice, municipal, and city court criminal proceedings; however, the additional rights which a youth enjoys in proceedings in such courts for alleged violation of section 45-5-624, MCA, are (1) service of the criminal summons upon both himself and a custodial parent or guardian; (2) advisement of his right to retained or, if appropriate, appointed counsel; and (3) waiver of his right to counsel only by both himself and a custodial parent or guardian.

THEREFORE, IT IS MY OPINION:

The provisions of the Montana Youth Court Act which apply to a youth charged with violation of section 45-5-624, MCA, in justice, municipal, or city court proceedings are sections 41-5-303 to 307, 41-5-402, 41-5-601(1), 41-5-602 and 41-5-604, MCA. A youth charged with violation of section 45-5-624, MCA, is further entitled to the following rights in addition to those normally accorded defendants in justice, municipal, or city court criminal proceedings: (1) service of the criminal summons upon both the youth and a custodial parent or guardian; (2) advisement of the right to retained or, if appropriate, appointed counsel; and (3) waiver of the right to counsel only by both the youth and a custodial parent or guardian.

Very truly yours,

MIKE GREELY
Attorney General