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FILE NO. S-1245

CRIMINAL LAW:
Guilty Pleas To Violations
of The Illinois Vehicle Code

Honorable C. David Vogel
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Pontiac, Illinois 61764

Dear Mr. Vogel:

This is in response to your letter in which you
ask:

"Must a person 17 years of age and above be
represented by retained counsel, or if indigent,
by appointed counsel, before the Court may
accept a guilty plea from him in a case where
he is charged with violations of the Illinois
Motor Vehicle Code."

It is my opinion that the provisions of article 113
of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat.
1975, ch. 38, par. 113-1 et seq.) apply to guilty pleas to

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charged violations of The Illinois Vehicle Code. The court's authority to accept a guilty plea to such a violation where the defendant is not represented by either retained or appointed counsel depends upon the factors of the defendant's age, the penalty to be imposed upon conviction and whether the defendant has waived his rights to representation by counsel before pleading to the charge.

The penalty imposed for the violation of a provision contained within The Illinois Vehicle Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 1-100 et seq.) varies with the nature of the violation. For example, the operation of an overweight vehicle in violation of section 15-111 of the Code (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-111) may result in the assessment of a fine. (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 15-113.) In instances of alleged violations arising under chapters 11 through 15 of the Code, one may be convicted of a Class B or C misdemeanor as provided by section 16-104 of the Code. (Ill. Rev. Stat. 1975, ch. 95 1/2, par. 16-104.) Conviction of a Class B or Class C misdemeanor may result in imprisonment. Ill. Rev. Stat. 1975, ch. 38, pars. 1005-5-2, 1005-8-3.

When a person is charged with an offense, i.e., a violation of any penal statute of this State (Ill. Rev. Stat.

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1975, ch. 38, par. 102-15), article 113 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1975, ch. 38, par. 113-1 et seq.) is applicable. Therefore, because violations of The Illinois Vehicle Code carry penalties as described above, article 113 is applicable to such violations.

Sections 113-3 and 113-5 (Ill. Rev. Stat. 1975, ch. 38, pars. 113-3 and 113-5) specifically apply to your question. Section 113-3 states in pertinent part:

"(a) Every person charged with an offense shall be allowed counsel before pleading to the charge. If the defendant desires counsel and has been unable to obtain same before arraignment the court shall recess court or continue the cause for a reasonable time to permit defendant to obtain counsel and consult with him before pleading to the charge.

(b) In all cases, except where the penalty is a fine only, if the court determines that the defendant is indigent and desires counsel, the Public Defender shall be appointed as counsel.
* * * "

Section 113-5 states:

"No person under the age of 18 years shall be permitted to plead guilty or waive trial by jury in any case except where the penalty is by fine only unless he is represented by counsel in open court."

Analysis of these statutes indicates that the court's authority to accept a guilty plea from an individual who is charged with a violation of The Illinois Vehicle Code and who

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is not represented by counsel, depends upon the circumstances of each particular case. For example, where the defendant is 17 years of age and is charged with a violation of the Code which may result in only a fine upon conviction, the court may accept his guilty plea if, by waiver, he is not represented by either retained or appointed counsel. On the other hand, if the same defendant is charged with a violation which may result in imprisonment, the court is prohibited from accepting his guilty plea if he is not represented by counsel. It must be kept in mind that aside from the provisions of section 113-5 pertaining to individuals under 18 years of age, the right to obtain counsel before pleading to a charge may be waived pursuant to Illinois Supreme Court Rules 401 and 402. Ill. Rev. Stat. 1975, ch. 110A, pars. 401, 402.

Several conclusions may be drawn from the aforementioned statutory provisions. The court may not accept a guilty plea from a defendant who is under 18, and who may receive a jail sentence upon conviction of a violation of the Illinois Vehicle Code if he is not represented by counsel. Where the resultant penalty for a violation of The Illinois Vehicle Code is a fine only, the court may accept a guilty

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plea from a defendant, regardless of age, who is not represented by counsel. This latter point is also applicable to defendants under 17 years of age because they may be prosecuted for violations involving only fines without regard to the Juvenile Court Act. (Ill. Rev. Stat. 1975, ch. 37, par. 701-1 et seq.) Section 2-7 of the Act (Ill. Rev. Stat. 1975, ch. 37, par. 702-7) expressly excludes from proceedings under the Juvenile Court Act, prosecutions which may result only in a fine.

Very truly yours,

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