



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

January 19, 2023

The Honorable Lewie G. “Skip” Negrotto IV
Municipal Court Judge, City of Pass Christian
220 East Scenic Drive, Suite 200
Pass Christian, Mississippi 39571

Re: Application of Mississippi Code Annotated Section 97-32-9

Dear Judge Negrotto:

The Office of the Attorney General has received your request for an official opinion.

Background

You provide in your request that in your capacity as Pass Christian Municipal Court Judge, you have had several students from the local school district before the court charged with possession of either tobacco or alternative nicotine product on school grounds, which is prohibited by Mississippi Code Annotated Section 97-32-9. Additionally, you are dealing only with possession by a student on “educational property as defined in Section 97-37-17,” the school resource officer is issuing citations only to students on school property, all of whom are under age 21, and the students are not charged with “a violation of any other statute.”

Question Presented

Pursuant to Section 97-32-9, may a municipal court punish a student who is found to be in possession of tobacco or alternative nicotine product on educational property?

Brief Response

Section 97-32-9 specifically prescribes punishment for persons under age twenty-one (21) who are found to be in possession of tobacco or alternative nicotine product *and* found to be in violation of any other statute, but there is no punishment for possession alone (emphasis added). Therefore, a municipal court is not authorized to charge and punish a student solely for possessing tobacco or alternative nicotine product on educational property.

Applicable Law and Discussion

Section 97-32-9 provides, in relevant part:

No person under twenty-one (21) years of age shall purchase any tobacco or alternative nicotine product. No student of any high school, junior high school or elementary school shall possess tobacco or alternative nicotine on any educational property as defined in Section 97-37-17.

(a) If a person under twenty-one (21) years of age *is found by a court to be in violation of any other statute and is also found to be in possession of a tobacco or alternative nicotine product*, the court shall punish the minor as follows. . . .

(Emphasis added).

The statute prohibits students from possessing tobacco or alternative nicotine product on any educational property as defined in Section 97-37-17; however, the criminal punishment prescribed in Section 97-32-9 is limited to those persons under twenty-one (21) years of age who are found by a court to be in violation of any statute other than Section 97-32-9 *and* who are also found to be in possession of tobacco or alternative nicotine product. Section 97-32-9 does not provide punishment for students who are found by a court to possess tobacco or alternative nicotine product on educational property. Therefore, in accordance with Section 97-32-9, a minor may not be prosecuted and sentenced solely for possessing tobacco or alternative nicotine product on educational property.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Abigail C. Overby*

Abigail C. Overby
Special Assistant Attorney General