

STATUTE: Construing Section 8383, R. S. Missouri 1939.  
INFORMATION:

October 24. 1941

Honorable A. L. Luther  
Prosecuting Attorney  
Scotland County  
Memphis, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

"I would like to have an opinion from your office regarding the construction to be given Section 8383 of the Revised Statutes of Missouri 1939 and especially the words "careful and prudent manner". This section has been given various interpretations by those who read it and has been the basis for a large number of criminal prosecutions based on a charge of reckless and careless driving.

"The Missouri Digest under the topic of Reckless Driving gives no cases and I would like to know whether or not such a charge of Reckless and Careless Driving can be charged and prosecuted under the present law."

Section 8383, R. S. Missouri 1939, reads in part as follows:

"Every person operating a motor vehicle on the highways of this

state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person, provided that a rate of speed in excess of twenty-five miles an hour for a distance of one-half mile shall be considered as evidence, presumptive but not conclusive, of driving at a rate of speed which is not careful and prudent, but the burden of proof shall continue to be on the prosecution to show by competent evidence that at the time and place charged the operator was driving at a rate of speed which was not careful and prudent, considering the time of day, the amount of vehicular and pedestrian traffic, condition of the highway and the location with reference to intersecting highways, curves, residences or schools: \* \* \* \* \*

\* \* \* \* \*

You inquire whether or not a charge of reckless and careless driving can be charged and prosecuted under this law. Generally speaking it is advisable to follow the language used in a statute in charging an offense under the law. In State v. Dildine, 51 S. W. (2d) 1, 1. c. 2, the court said:

"\* \* \* \* Those forms, in order to be invulnerable against assaults of ingenious attorneys, are often so involved, prolix, and redundant that they are unintelligible to the lay mind, and, until explained by expert counsel, do not apprise the accused of the nature and cause of the accusation. State v. Anderson,

298 Mo. loc. cit. 391, 250 S. W. 68. We try to get away from such forms the best we can, with little legislative aid. We have ruled that an information, in the language of the statute describing the offense, if the statute states all the elements of the crime, is sufficient. That means a general statement without particulars is usually sufficient. Here the information is substantially in the language of the statute, and is therefore sufficient."

Also, see *State v. Revard*, 106 S. W. (2d) 906. However, there is an exception to the rule when such language is not sufficient to notify the defendant as to what he shall defend against as in *State v. Maher*, 124 S. W. (2d) 678, l. c. 683.

"(4-7) As a general rule it is sufficient to frame the indictment in the words of the statute. *State v. Newman*, 152 Mo. App. 144, 132 S. W. 753; *State v. Ferris*, 322 Mo. 1, 16 S. W. 2d. 96; *State v. Settle*, 329 Mo. 782, 46 S. W. 2d 882. This is true only where the statute describes the entire offense by setting out the facts constituting it. But we do not think the rule can be applied to the statute above quoted. The rule does not apply if the statute creating the offense uses generic terms in defining the offense and does not individuate the offense with such particularity as to notify the defendant as to what he shall defend against. Under these conditions the indictment in the language of the statute is not sufficient. As stated by Judge Sherwood in the case of *State v. Terry*, 109 Mo. 601, 19 S. W. 206, 209, 'Following the general language of the statute will answer only in those instances where

all the facts which constitute the offense are set forth in the statute itself, which declares or announces or creates the offense.'"

It is well established that the exact language need not be used in describing the offense in an information but that language of similar import and not repugnant to the words of the statute are sufficient. In *State v. Carter*, 64 S. W. (2d) 687, 1. c. 688, the court in so holding said:

"(1-3) 1. The appellant contends that the information is fatally defective. The information alleges that the appellant 'did then and there, while in charge of an automobile in which he was then and there unlawfully transporting intoxicating liquor, \* \* \* against the peace and dignity of the state.' It is the appellant's contention that the information does not comply with section 4517, supra. This section requires that the intoxicating liquor must be 'carried, conveyed or transported in violation of any provision of the laws of this state'. Webster's New International Dictionary gives 'violation of the law' as one of the definitions of the word 'unlawfully'. In *State v. Hoffman* (Mo. Sup.) 297 S. W. 388, loc. cit. 389, in an opinion by White, J., we said: 'The rule is that in a statutory offense it is not always necessary to use the exact language of the statute in describing the offense. It is sufficient if it uses language of similar import, not repugnant to the words of the statute. *State v. Harroun*, 199 Mo. 519, 98 S. W. 467; *State v. Tiemann* (Mo. App.) 253 S. W. 453; *State v. Standifer*, 209 Mo. loc. cit. 273, 108 S. W. 17.'"

Also, see State v. Rosenblatt, 185 Mo., page 114.

Section 8383, supra, provides that every person operating a motor vehicle on the highways of this state shall drive same in a careful and prudent manner. The word prudent is synonymous with the word careful. See Funk and Wagnall, New Standard Dictionary. The antithesis of prudent as shown by the same authority is the word "reckless." Certainly, we can also say that the word "careless" would be the antithesis of "careful."

Therefore, in view of the above decisions holding that the information or indictment shall follow the language of the word or words having the same regular meaning, or at least language of similar import, it is the opinion of this Department that the words "careless" and "reckless" negative the words "careful" and "prudent" and may be used in an information charging an offense under Section 8383, supra.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

---

VANE C. THURLO  
(Acting) Attorney General

ARR:BAW