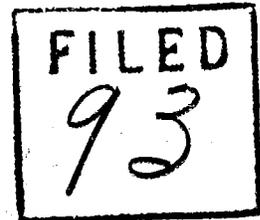


DISPOSITION OF STOLEN PROPERTY: In possession

DISPOSITION OF ILLEGAL PROPERTY: of police officers.



August 30, 1945

Honorable Hugh H. Waggoner
Superintendent, Missouri State
Highway Patrol
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based on the following facts:

"A recent inventory of our Troop at Lee's Summit shows numerous items listed as confiscated property. These items include an electric iron which was taken from a shoplifter about five years ago. The owner could not be determined. We have twelve quarts of motor oil which came from a series of station burglaries and the owner could not be located. Five slot machines were confiscated about five years ago in a series of gambling raids conducted by members of this department and the Attorney General's Office. There is no court record of these machines that we can determine.

"We have seven tires, five truck tires and two passenger car tires which were confiscated in that part of the state as being taken in a series of tire thefts and burglaries. We have no record as to who the owner is.

"We would like to have information as to how we can go about disposing of this property as this troop is the

first one inventoried and we expect to have an accumulation of such property after we have completed our inventory for the whole state."

We notice in your letter that in all probability there will be other properties inventoried, which properties may not be covered in your request for this opinion, so we are including the procedure of the disposition of several other articles which your department may have in their possession.

We call your attention to Section 4164, R.S. Mo. 1939, which deals with the retention of stolen property by officers receiving same. Said section reads:

"When property alleged to have been stolen, purloined, embezzled or obtained by false pretenses, or to have been obtained in any of the modes specified in the article concerning offenses against public and private property, shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officers, he shall hold the same subject to the order of the court or officer authorized to direct the disposition thereof."

Section 4165, R.S. Mo. 1939, deals with the return of stolen property to the owners of same when they can be found, and reads:

"Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offenses referred to in the preceding section, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by such magistrate, which order shall entitle the owner to demand and receive such property."

Section 4168, R.S. Mo. 1939, permits the sale of stolen property when it is not claimed by the rightful owner, and is

as follows:

"If such property shall not be claimed by the owner within six months from the time any person shall have been convicted of obtaining it, in any of the modes referred to in this article, the court or magistrate authorized by the preceding provisions to order a restoration, may order the same to be sold, and the proceeds of the sale, after payment of the expenses of the preservation and sale of the property, shall be paid into the county treasury for the use of the county."

Section 4170, R.S. Mo. 1939, requires a description in writing of the property sold to be filed with the court or officer making the order of sale, so that the owner may identify the same, if he shall claim the proceeds thereafter.

The above sections apply to all stolen property of a legal nature, and the disposition of said property should be handled within the county wherein it was confiscated and by order of the court in which the defendant was prosecuted. It is our suggestion that in obtaining the proper orders of the court for disposition of this property your department should consult the Prosecuting Attorney in the particular county where the case arose.

Section 4173, R.S. Mo. 1939, deals with the disposition of property that is illegal in nature, and provides:

"Upon complaint being made, on oath, in writing, to any officer authorized to issue process for the apprehension of offenders, that any of the property or articles hereinafter named are kept within the county of such officer, if he shall be satisfied that there is reasonable ground for such complaint, shall issue a warrant to the sheriff or any constable of the county, directing him to search for and seize any of the following property or articles:

"First - Any gaming table or gambling device prohibited by law.

"Second - Any of the following articles, kept for the purpose of being sold, published, exhibited, given away or otherwise distributed or circulated, viz.: obscene, lewd, licentious, indecent or lascivious books, pamphlets, ballads, papers, drawings, lithographs, engravings, pictures, models, casts, prints or other articles or publications of an indecent, immoral or scandalous character, or any letters, handbills, cards, circulars, books, pamphlets or advertisements or notices of any kind giving information, directly or indirectly, when, where, how or of whom any of such things can be obtained.

"Third - Any of the following articles, kept for the purpose of being sold, given away or otherwise distributed or circulated, contrary to law, viz.: pills, powders, medicines, drugs or nostrums, or instruments or other articles or devices for preventing conception, producing or procuring abortion or miscarriage, or other indecent or immoral use, or any letters, handbills, cards, circulars, books, pamphlets, advertisements or notices of any kind describing or purporting to describe any of such articles, or giving information, directly or indirectly, when, where, how, or of whom any of such things can be obtained.

"Fourth - All articles or raw materials found in the possession of any person or persons intending to manufacture the same into any articles or things heretofore in this section described, and also all tools, machinery, implements and personal property where such articles are found and seized and used or intended to be used in the manufacture of such articles and things."

Section 4175, R.S. Mo. 1939, provides for a notice to persons owning, or who might claim, an interest in such property, and reads:

"The judge or justice issuing the warrant shall set a day, not less than

five days nor more than twenty days, after the date of such service and seizure, for determining whether such property is the kind of property mentioned in section 4173, and shall order the officer having such property in charge to retain possession of the same until after such hearing. Written notice of the date and place of such hearing shall be given, at least five days before such date, by posting a copy of such notice in a conspicuous place upon the premises in which such property is seized, and by delivering a copy of such notice to any person claiming an interest in such property, whose name may be known to the person making the complaint or to the officer issuing or serving such warrant, or leaving the same at the usual place of abode of such person with any member of his family or household above the age of fifteen years. Such notice shall be signed by the justice or judge or by the clerk of the court of such judge."

Section 4177, R.S. Mo. 1939, gives the judge or justice before whom such a cause may be heard the right to order the said illegal property destroyed, and is as follows:

"If the judge or justice hearing such cause shall determine that the property or articles are of the kind hereinbefore mentioned, he shall cause the same to be publicly destroyed, by burning or otherwise, and if he find that such property is not of the kind mentioned, he shall order the same returned to its owner. If it appear that it may be necessary to use such articles or property as evidence in any criminal prosecution, the judge or justice shall order the officer having possession of them to retain such possession until such necessity no longer exists, and they shall neither be destroyed nor returned to the owner until they are no longer needed as such evidence."

In cases where this property has been seized without a search warrant, or cases in which no criminal prosecution was had and where it is impossible to follow the procedure as outlined in the preceding statutes, illegal property may be destroyed by the officers without an order from a justice or a magistrate. The Supreme Court of Missouri, in considering the question of slot machines or gambling devices which can have no lawful purpose, stated in the case of State v. Joynt, 110 S.W. (2d) 737, l.c. 740:

"* * * * The maintenance of this device described by the owner as a gambling device, capable of no lawful use and being extensively used and displayed by the owner and his licenses for public play, is a public nuisance, and the police under their general powers have the right to seize it and destroy it summarily. In addition to offending our criminal laws, it is an offense to public order and welfare as well. 'At the common law acts done in violation of the law, or which are against good morals or public decency, and which result in injury to the public, constitute a public nuisance. ' * * * *"

The court, in discussing a similar situation and commenting on the Joynt case; supra, said in the case of State v. Frankenhoff, 125 S.W. (2d) 816, l.c. 818:

"Therefore, under our ruling in State ex rel. v. Joynt, supra, we hold that the machines in question were unlawful property and not protected by law, regardless of the manner in which they were seized.
* * * *"

It is anticipated that some of the slot machines which your department has seized might contain money. Under date of October 23, 1934, this department issued an opinion to the Honorable Herbert M. Braden, Prosecuting Attorney of Livingston County, Missouri, which dealt with the disposition of money found in slot machines. A copy of this opinion is enclosed for your use in the event money is found in any of the slot machines that you have in your possession.

August 30, 1945

Conclusion.

It is the opinion of this department that illegal property seized by police officers may be destroyed; also that any money taken from slot machines, gambling devices or other illegal gambling devices, as described in Section 4173, supra, if unclaimed by the owner thereof shall be turned into the general revenue fund of the county in which said devices were confiscated. Further, it is the opinion of this department that stolen property of a legal nature seized by police officers may be sold, if not claimed, and delivered to the rightful owner thereof.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

WBD:ml
Enc.