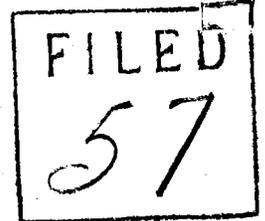


MOTOR VEHICLE: Theft of truck unable to operate under its own power would constitute theft of motor vehicle.

July 29, 1947



Mr. G. Logan Marr  
Prosecuting Attorney  
Morgan County  
Versailles, Missouri

Dear Sir:

This will acknowledge your request for an opinion based upon the following facts:

"The facts disclose that the Model T. truck has not been in operation for as much as five to seven years. It stood standing in a field unused for that length of time. The tires and tubes have disappeared off of the truck in the last year. A neighbor boy sold the same for junk, and a junk hauler came after the truck. The real owner, the person on whose property was located the truck, and in whose enclosure the truck was standing, makes complaint that his motor vehicle was stolen. The truck was removed as stated without the consent or knowledge of the owner. The charge is one for feloniously stealing a motor vehicle.

"This model T. truck was sold to a junk dealer and was partly dismantled and sold as junk.

"Now just when does a model T. truck cease to be a motor vehicle, and become junk? Must be in operation condition when the model T. truck was stolen? Or the fact that the truck could not then and there be self propelled make any difference?

"The facts further disclose that the party who bought the model T. truck bought the same for junk and tore same up. Some parts he sold for used car parts and some he sold as just junk."

The question presented in your request asks whether or not the felonious taking of the Model T truck, which has been standing in a field for several years and has not been operated, would support a prosecution for feloniously stealing a motor vehicle.

Section 8404, R. S. Mo. 1939, in part provides:

"(a) Any person who shall be convicted of feloniously stealing, taking or carrying away any motor vehicle, or any part, tire or equipment of a motor vehicle of a value of \$30.00 or more, or any person who shall be convicted of attempting to feloniously steal, take or carry away any such motor vehicle, part, tire or equipment, shall be guilty of a felony and shall be punished by imprisonment in the penitentiary for a term not exceeding twenty-five years or by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars (\$1,000) or by both such fine and imprisonment.

"(b) Any person who shall be convicted of stealing, taking or carrying away any motor vehicle tire or any part or equipment of a motor vehicle under the value of \$30.00 shall be punished by imprisonment in the county jail not exceeding one year or by fine not exceeding one hundred dollars (\$100.00) or by both such fine and imprisonment."

Whether or not the taking of the truck in question would support a prosecution under the above statute depends upon the determination that the truck was a "motor vehicle" within the meaning of the statute.

The term "motor vehicle" is defined in Section 8367, Laws Missouri 1945, page 1195, as follows:

"\* \* \* 'Motor vehicle.' Any self-propelled vehicle not operated exclusively upon tracks, except farm tractors. \* \* \*"

This definition does not take into consideration the mechanical condition of the vehicle or its use or non-use and although the truck in question, at the time it was taken, was not in running condition we believe it would be a question of fact whether or not it had lost its identity as a motor vehicle within the purview of the definition contained in the above quoted statute.

In the case of State v. Tacey, 102 Vt. 150 Atl. 68, the Supreme Court of Vermont was considering the conviction of a person found guilty in the lower court of operating a motor vehicle while under the influence of intoxicating liquor. The statute relative to the offense defined "motor vehicle" as including all vehicles propelled by power other than muscular power, with certain exceptions. The defendant had contended that inasmuch as the car he was charged with operating was disabled and unable to move under its own power, (he was being towed by another car at the time of arrest) it was not a "motor vehicle" within the meaning of the statute. Overruling the defendant's contention the court said at Atlantic l.c. 69:

"(1) The first ground is untenable. Manifestly it was the design, mechanism, and construction of the vehicle, and not its temporary condition, that the Legislature had in mind when framing the definition of a motor vehicle. Neither the authorities nor sound logic admit of a different conclusion."

Again in the case of State v. Lansing, 108 Vt. 218, 184 Atl. 692, the Vermont Supreme Court affirming a conviction of operating a non-registered motor vehicle where defendant steered a Dodge car as it coasted down hill, said car being in such poor mechanical condition that it would not operate under its own power, said "the inability of the Dodge car to operate on its own power was a temporary and not a permanent condition." The court also cited and quoted from the Tacey case, supra.

Considering the cases cited above in connection with the facts which you have related, we believe it is a question of fact whether or not the truck in question had lost its identity as a motor vehicle at the time it was taken. If, when it was taken, it could have been put into operating condition with ordinary repairs it would have possessed the characteristics identifying it as a motor vehicle. If this is found to be true, and the other elements of the crime are present the charge of feloniously

Mr. G. Logan Marr

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stealing a motor vehicle could be lodged against the offending person.

Respectfully submitted,

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RFT:mw

APPROVED:

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