

CRIMINAL LAW: Employer may not transport employees to  
EXPLOSIVES: work in truck in which dynamite is also  
carried without violating Section 4552,  
R.S. Mo. 1939.

November 29, 1949

Honorable Edgar Mayfield  
Prosecuting Attorney  
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Lebanon, Missouri



Dear Mr. Mayfield:

We have your recent letter in which you request an opinion of this office. Your letter is as follows:

"I would like to respectfully request an opinion of your office on the following proposition: A construction company is engaged in putting up poles for a rural electrification program. The company's employees meet in town each morning, and are transported to and from their place of work in company trucks. These trucks are commonly known as pick-up trucks of small tonnage. The employees are carried in loads of from three or four up to eight or ten in the beds of these trucks. They have no regular place of employment in the county, but move through the county as the construction on the electrical line progresses. These trucks are driven by company employees. The company also carries in these trucks along with the above mentioned employees, dynamite and/or dynamite caps, used by these crews in blasting for the construction of the electrical lines.

"QUESTION: Are the drivers of the trucks of the construction company or its officers, criminally liable under Section 4552, Revised Statutes of Missouri, 1939, which reads as follows:

"Sec. 4552. Articles not to be transported on passenger trains.-

"It shall not be lawful to transport, carry or convey, or deliver to be transported, carried or conveyed, or to cause to be delivered to be transported, carried or conveyed, any of the substances or articles known as dynamite, dualine, hercules or giant powder, nitroglycerine or glycerine oil, nitroleum or blasting oil or nitrated oil, or powder mixed with any such oil, or fiber saturated with any such article or substance, in any vehicle used or employed in transporting passengers, or in any train of cars used in transporting passengers: Provided, that an ordinary freight train, with a caboose or passenger car used as a caboose, shall not be construed as a train of cars used in transporting passengers within the meaning of this section. (R.S. 1929, Sec. 4163)'

"I would appreciate very much this opinion, as the question has arisen and will have to be determined. The company involved claims the expense of providing a separate truck to haul explosives is too great, and that it will greatly hinder their operations to make such provisions. Considering only the angle of safety of employees, I would think they would be made than happy to supply separate transportation for their men. But they are not, and indicate that unless the men ride on those trucks, they will have to get to work the best way they can. The men are forced to ride in the trucks or quit their jobs, as they have no other means of transportation."

Your question is whether it would be possible to bring the owner and drivers of these trucks under the provisions of Section 4552, R. S. Mo. 1939. This section was originally enacted in 1881 and revised in 1889, 1909 and 1919, but has undergone, for our purposes, no substantial alteration. In particular, the phrase "in any vehicle used or employed in transporting passengers" has been consistently included since the original enactment.

A thorough search discloses that this section has never been construed by the courts of this state, therefore it will be necessary to resort to construction of the statute to ascertain its

applicability here. Section 4554, R. S. Mo. 1939, referring to the present section, is as follows:

"If any person or persons shall knowingly violate any of the provisions of the two preceding sections, they shall be deemed guilty of a misdemeanor, and punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment."

Section 4553, R. S. Mo. 1939, the other statute covered by Section 4554, deals only with railroads and does not aid in the construction of the present section. Section 4554, supra, makes a violation of Section 4552 a misdemeanor, hence the latter is a "penal statute which should be strictly construed, although the life and spirit of the statute should not be destroyed thereby." (Brockman Comm. Co. v. Western Union Telegraph Co., 180 Mo. App. 626.)

The caption of the present section is "Articles not to be transported on passenger trains," but this does not limit the application of this statute if the plain wording of this statute is broad enough to clearly include other vehicles. The court in State v. Maurer, 255 Mo. 152, decisively states the law in this matter as follows:

"The heading of chapters, articles and sections in the Revised Statutes are mere arbitrary designations inserted for convenience of reference, and have no legislative authority to lessen or expand the letter or meaning of the law."

Although the title may certainly be considered to aid in resolving ambiguity (State v. Schwartzmann Service, 225 Mo. App. 577), the Maurer case, supra, is the law where the plain wording of the statute is broader than the title. Furthermore, if only trains were intended, the phrase "in any vehicle used or employed in transporting passengers" would have been unnecessary, for the phrase "or in any train of cars" immediately follows the phrase above. As was said in Graves v. Little Tarkio Drainage District No. 1, 345 Mo. 557:

It is presumed that the Legislature intended every part and section of a statute

or law to have effect and to be operative, and did not intend any part or section of a statute to be without meaning of effect."

The pertinent part of the statute, for our purposes, is as follows:

"It shall not be lawful to \* \* \* carry \* \* \* or to cause to be carried \* \* \* any \* \* \* dynamite \* \* \* in any vehicle used or employed in transporting passengers \* \* \*"

We are particularly concerned with the phrase "in any vehicle used or employed in transporting passengers," for there seems to be no disputing point that the company in question is "carrying or causing to be carried, dynamite."

The word "vehicles" certainly includes trucks, for as was held in DiGuilio v. Rice, 70 Pac. (2d) 717, l.c. 719:

"A vehicle is that in or by which any person or thing is or may be carried, especially on land."

The term "used or employed in transporting" is too clear in this case to require further interpretation.

The most difficult word is "passenger." The following language emphasises the difficulty presented by the use of this word: "The definitions that have been given the word 'passenger' are nearly as numerous as the different occasions that have arisen to state its meaning." Sewell v. Atchison, Topeka and Santa Fe Ry. Co., 96 Pac. 1007.

The following cases and citations have given judicial definitions of the word "passenger" and are most helpful and, in fact, conclusive of the question here:

"One riding in a private vehicle, such as a motor vehicle, driven by the owner or his chauffeur, is a passenger for hire where he renders compensation therefor, either by a pecuniary benefit to the motorist, or by a nonpecuniary benefit directly related to the transportation." (Citing cases.)  
(13 C. J. S., page 1048.)

"Where relationship between automobile host and party riding with him is one of business, and transportation is supplied in pursuit thereof for mutual benefit, the party is a passenger."  
(McCann v. Hoffman, 70 Pac. (2d) 909.)

"A laborer employed to work on the tracks of a streetcar company who travels on the company's car on a laborer's free pass to the place where he is ordered to work, is a passenger, \* \* \*"  
(Haas v. St. Louis & S. F. R. Co., 111 Mo. App. 706.)

A case which is very closely in point is Williams v. Union Switch & Signal Co., 158 N. W. 901, l.c. 902, where it was held:

"Where the employer, a switch and signal company, installing electric signals for a railway, was transporting its servants on a gasoline rail car, not as a part of his employment of cleaning out battery wells, but was transporting him to and from a boarding house operated by it, such servant was a passenger."

This next citation from 13 C. J. S., page 1036, indicates the character of the construction company in relation to its employees:

"A private carrier of passengers is one who, without being engaged in such business as a public employment, undertakes to deliver passengers for hire or reward, or even gratuitously."

A further recitation of authority seems unnecessary, as it now manifestly appears that the employees of the construction company are passengers for the purpose of applying Section 4552, supra. The plain intendment of the Legislature was to protect those riding in all types of vehicles, including trucks, and providing that the same people shall not be exposed to the inherent danger of high explosives and motion. Although we have set out ample authority to show that these employees are indeed passengers, we are even more impelled to our ultimate conclusion by the fact that this statute is not primarily concerned, nor was it enacted, to deal with "passengers," as distinguished from other persons, but was manifestly made into law to protect persons in vehicles of all types from the danger of explosives placed in moving vehicles. We have statutes relating to stored,

stationary explosives, but this statute is one especially designed to deal with dynamite in vehicles which are capable of movement. That the Legislature chose to label all persons in such moving vehicles, for purposes of this statute, as "passengers" is understandable when one fully comprehends the purpose of the statute.

To sum up then, the trucks employed by the construction company for transporting its employees to and from work are "vehicles used or employed in transporting passengers." The employees are passengers because (1) the representative cases show that employees have been called passengers in similar situations, and in fact whether they were passengers was the principal question involved, (2) because the plain purpose of the statute is to protect persons in vehicles from the danger of dynamite in these same moving vehicles, and (3) because the word "passengers" was not used in its technical sense, but rather it was used in its popular meaning, i.e., "riders."

#### CONCLUSION

It is, therefore, the opinion of this office that the truck drivers and officers of a construction company, which company transports its employees, except of course those necessary for the transportation of the explosives, to and from work in trucks in which there has been placed dynamite and/or dynamite caps, are violating Section 4552, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

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