



OFFICES OF THE

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JEFFERSON CITY

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OPINION LETTER NO. 236

Honorable Ralph L. Martin
Prosecuting Attorney
Jackson County Courthouse
415 East 12th Street
Kansas City, Missouri 64106

Dear Mr. Martin:

This letter is in response to your request for this office's opinion on whether Section 556.140, RSMo 1969, applies to robbery in the first degree.

Section 556.140, RSMo 1969, reads as follows:

"If any person shall be convicted of committing a felony, or attempting to commit a felony, while armed with a pistol or any deadly weapon the punishment elsewhere prescribed for said offense in the statutes and laws of the state of Missouri for the felony of which he is convicted shall be increased by the trial judge by imprisonment in the state penitentiary for two years. Upon a second conviction for a felony so committed such period of imprisonment shall be increased by ten years; and upon a third conviction for a felony so committed such period of imprisonment shall be increased by fifteen years. Upon a fourth or subsequent conviction for a felony so committed the person so convicted shall be imprisoned for life."

In State v. Harris, 87 S.W.2d 1026 (Mo. 1935), the Missouri Supreme Court specifically considered this question. There, Harris

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was charged and convicted with robbery in the first degree by means of a dangerous and deadly weapon. The jury returned a verdict assessing punishment at the state penitentiary for a period of ten years. The trial court imposed a twelve year sentence pursuant to the authority conferred by Section 556.140, RSMo (then Section 4428, R.S. 1929). The Supreme Court in reducing the sentence to ten years held that this section was not applicable to this particular felony noting that robbery in the first degree included the use of a dangerous and deadly weapon as an element of the felony. In State v. Carter, 443 S.W.2d 176 (Mo. 1969), the court followed the rationale of the Harris opinion.

It is our view that the holding of the Missouri Supreme Court in State v. Harris is controlling unless and until modified by the court or the legislature.

Yours very truly,



JOHN C. DANFORTH
Attorney General