

MOTOR VEHICLE LAW: Sufficiency of statutory penalty for operating a motor vehicle on highways without license plates.

March 7, 1934. 3-13



Hon. J. Dorr Ewing
Prosecuting Attorney
Grant City, Missouri

Dear Sir:

We acknowledge receipt of your letter of February 13, 1934, enclosing copy of an Information and Motion to Quash, which letter is as follows:

"Enclosed you will please find a copy of the information filed, charging defendant, Harold Hass, of the crime of driving a car without license plates. You will also please find a motion to quash which is filed in this cause. The court is sustaining the motion to quash upon the grounds that the information is insufficient not in any way but upon the grounds, as I understand him, that the crime, being under Section C of Section 7770, and the penalty being a general penalty and properting to cover all provisions, the act which penalty is provided in Section 7786, Section D is to general.

In other words this motion to quash is sustained on the grounds that there is no penalty provided by law for operating a motor vehicle without license plates thereon. Our court will be in session until about the 22nd of this month. I would like to know what you think as to whether this case should be appealed? I realize that this is not giving very much time for consideration of the case, but I must take an appeal at that time. Of course, I would not be the one, I take it, who would appear in the Appellate Court and in as much as your department does I would like to have your suggestions on the matter. * * * * *

The enclosed information is as follows:

"J. Dorr Ewing, Prosecuting Attorney, within and for the County of Worth and State of Missouri, being first duly sworn, on his oath, informs the court that at the County of Worth and State of Missouri, on the 2nd day of November, A. D. 1933, one Harld Hass did wrongfully, wilfully and unlawfully drive and operate an automobile, to-wit: One Model "T" Ford Car, on the roads and highways of the State of Missouri without having at said time upon the front and rear thereof license plates issued by the Secretary of State of Missouri for the year 1933; against the peace and dignity of the state."

The enclosed Motion to Quash is as follows:

"Now comes defendant and moves the court to quash the information herein, for the reason that it does not charge a crime under the laws of the state of Missouri."

Section 7770 R. S. Mo. 1929, paragraph C applying to the registration of license plates of motor vehicles reads as follows:

"(c) Every motor vehicle or trailer shall at all times have displayed the registration plates issued by the commissioner, entirely unobscured, unobstructed, all parts thereof plainly visible and kept reasonably clean, and so fastened as not to swing. On all motor vehicles one plate shall be displayed on the front and the other on the rear of such motor vehicle, not less than eight nor more than forty-eight inches above the ground, except that on trailers, motorcycles and motor-tricycles one plate shall be so displayed on the rear thereof." * * * *

Section 7786 R. S. Mo. 1929, paragraph D, referring to the penalty of the infringement of the above section reads as follows:

"(d) Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine of not less than five dollars (\$5.00) or more than five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

From the substance of your letter it would seem that the motor vehicle law as it relates to driving on the highways without license plates, and its provision for penalty for violation of same is attacked, because the penalty provided is said to be too general--that is, the penalty is said to be so general that it cannot be reasonably said to apply as a punishment for the failure to act as the law prescribes.

It is true, that a statute which fixes a crime should leave nothing to conjecture, not even the punishment as prescribed by law. The law should be complete and definite in all of its substantive elements. It is further true, that in the motor vehicle act the Legislature provided in Section 7770, paragraph C, R. S. Mo. 1929, that no person shall drive on the highways without first obtaining the proper state license, and then later in the act, in Section 7786, paragraph D, R. S. Mo. 1929, the Legislature provided for the punishment for the violation of the provisions of the act. In this latter section, the Legislature fixed the punishment for violating specific parts of the Act and provided that it be a misdemeanor for violating any of the other provisions of the act. By providing a punishment for any of the other provisions of the act, it is reasonable to conclude that they meant the provisions other than the ones where they had already fixed the punishment, and contained in the provisions of (a), (b) and (c) of the same Section.

Our Supreme Court said in State vs. Howell, 296 S. W. 370, 1. c. 371; 317 Mo. 330:

"* * * It is entirely proper for the Legislature to prescribe different punishments for different kinds of offenses, and we know of no authority or principle which would prevent the Legislature from including in the same statute different offenses of the same general character. * * * The range of punishment may vary with the gravity of the offense in each individual case. * * *"

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It seems to us that in the case at bar the contention that the punishment as fixed by the Legislature is too general is not well founded.

It is the opinion of this office that the information as filed is in the language of the statute and is sufficient in form and substance. It is our further opinion that the Motion to Quash as presented by Defendant should be overruled.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK,
Attorney General.

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