

CRIMES AND PUNISHMENTS:—Under Section 7782, para. a, to tamper with an automobile is a crime, and according to Webster, to tamper means to alter or change without right. Since our Courts have not interpreted the word we cannot definitely say whether a person who removes a part and carries it away should be prosecuted under said Section, instead of under the Larceny section.

2-24
February 21, 1934.



Mr. Henry C. Salveter,
Prosecuting Attorney,
Sedalia, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I am writing to your department for an interpretation of the word 'tamper,' as used in paragraph 'a' of Sec. 7782, 1929, which section reads as follows: 'No person shall drive, operate, use or tamper with a motor vehicle or trailer without the permission of the owner thereof.

To make the point clear we have for some time in our court filed informations under this paragraph of the statute, charging defendants with tampering with automobiles. Most crimes under this section are committed by young men, and many of them have had no prior convictions.

In the case I have in mind a young man stole two truck tires which were over a greater value than \$30.00. In the interest of permitting the jury to give the young man a jail sentence if they saw fit, rather than charging out and out grand larceny, I have put two counts in the information, one on grand larceny and one on tampering, and then in cases where they are young men of previous good character I have elected to go to the jury on the charge of tampering with an automobile under the above section.

A short time ago an attorney in our court raised the point that if a defendant does nothing more than go to the owner's truck and remove tires and carry them away, that he cannot then be found guilty of tampering. It has always been my belief that the word 'tamper' means just what Webster defines it to mean,

that is changing or altering a thing.

I have been unable after diligent search to find any court definitions square out on this point. I have found a citation which refers to an opinion of the attorney general dated April 24, 1931. I do not know what the facts were or the question raised in the opinion above cited.

If I am correct in my opinion that the word 'tamper' was intended by the Legislature in its procedure sense, that is altering or changing a thing without permission, then, of course, my fellow attorney's opinion is incorrect. If I have a mistaken interpretation, then, of course, I shall not in the future act upon my former opinion in the matter, and will let a case involving the facts as above stated stand or fall entirely upon the proposition of larceny.

I will sincerely appreciate the opinion of your department, and also any information you can give me with reference to the former opinion of the Attorney General under date of April 24, 1931."

Paragraph (a) of Section 7782, R. S. Mo. 1929, provides as follows:

"No person shall drive, operate, use or tamper with a motor vehicle or trailer without the permission of the owner thereof."

Paragraph (c) of Section 7786, R. S. Mo. 1929, provides as follows:

"Any person who violates paragraph (a) of section 7781, paragraph (a) of section 7782 or paragraph (f) or (g) of section 7783 shall be deemed guilty of a felony and on conviction thereof shall be punished by imprisonment in the penitentiary for a term not exceeding five years or by confinement in the county jail for a term not exceeding one year, or by a fine not exceeding one hundred dollars (\$100.00) or by both such fine and imprisonment."

While our courts have upheld prosecutions under

paragraph (a) of Section 7782 for driving, operating, using or tampering with automobiles where the person has attempted to drive the car or use it in some manner, we have not been able to find any decision where the court has construed the word "tamper" to include the removing of parts or equipment from an automobile. Webster defines the word tamper to mean, "To meddle so as to alter a thing, especially to make changes without right." While we find no judicial construction of the word "tamper", under the foregoing definition by Webster it would seem that if a person removed a part or a piece of equipment from an automobile he would be "tampering" with said automobile, under the terms of the statute. If such is true, the crime would be committed regardless of whether the accused person stole the article removed or not.

Paragraph (a) of Section 7786 provides that the stealing of any part of equipment of a motor vehicle of the value of more than \$30.00 shall be a felony and punished by imprisonment in the penitentiary for a term not exceeding five years, or by confinement in the county jail for a term not exceeding one year, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment. Both are made felonies, although the punishment for tampering is not as severe as the punishment for stealing. In view of the fact that there is no decision of this State, or any other State which we can find, dealing with the construction of the word "tampering," as applied to your inquiry, we cannot say whether or not a conviction would be upheld. In view of the definition of the word as given by Webster, it would appear that one is guilty of "tampering" when he removes a part or piece of equipment on an automobile. Yet, it is barely possible that the courts might hold that the word "tamper" is synonymous with the words "drive, operate, or use."

You inquire as to the opinion issued by a former Attorney General under date of April 24, 1931. This opinion, written by Mr. Carl J. Otto, then Assistant Attorney General, is as follows:

"The word 'tamper' according to Webster means, 'To meddle so as to alter a thing; especially to make changes without right.' If, under the facts you give, a crime was committed of 'tampering' with a motor vehicle, said crime was completed immediately upon removing the engine head, and it was not necessary that the same be stolen or taken away in order to complete the crime. We are inclined to believe that prosecution might possibly be brought under the felony charge of tampering.

However, as a practical matter and in order to minimize the danger of an acquittal, we seriously doubt the advisability of prosecuting under the felony section. In the first place, there has been no Supreme Court interpretation of this law, and the penalty inflicted is rather severe, thereby increasing the possibility of acquittal. On the whole, we believe the best practical advice is to prosecute him under subsection (b) of Section 28, p. 105, Laws 1921, First Extra Session."

The opinion which we give now is not in conflict with the above opinion given by a former Attorney General. We, of course, cannot with certainty, in view of a lack of decisions by our courts, determine what construction will be placed upon this Section. If the courts should follow the literal definition of the word, then a person who removes a part or piece of equipment from an automobile would be "tampering" with the automobile. However, as a matter of safety, it might be advisable to indict such individual either for stealing or attempting to steal such part or equipment.

Very truly yours,

FRANK W. HAYES,
Assistant Attorney General.

APPROVED:

Attorney General.

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