

MOTOR VEHICLE LAW--CRIMES: Crime of operating a motor vehicle in a reckless manner.

February 10, 1936.

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Honorable Wayne V. Slankard
Prosecuting Attorney
Newton County
Neosho, Missouri

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Dear Sir:

We acknowledge receipt of your request for an opinion dated January 24, 1936, which is as follows:

"Is Section 7775, R. S. Mo., 1929 a part of the Criminal Law taken together with Section 7786, para. (D) so that a man can be charged by information or indictment with the crime of reckless driving. In other words, does Section 7775 together with para D of section 7786 define a crime?"

Section 7775 R. S. Mo. 1929, provides a rule of conduct affecting every person who operates a motor vehicle in Missouri. Said section reads in part as follows:

"Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person, * * * residences or schools:
* * * *."

It is to be noted that the word "prosecution" appears in said section which indicates that the Legislature had in mind criminal prosecutions as well as civil suits.

Section 7786 R. S. Mo. 1929, provides a criminal penalty when one violates the provisions of Section

7775, supra, and under the provisions of Section 7786 several specific acts of persons are separately punishable, and under paragraph (d) of said section there is a sweeping penalty provision which reads:

"(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."

It happens that conduct required of motor vehicle drivers, as prescribed in section 7775, supra, is punishable, and punishable only under the provisions of paragraph (d) of section 7786, supra.

Kelley's Criminal Law (4th Ed.) page 2, Section 2, provides:

"There are, and always were, some acts for which the offender is held accountable, both to the individual injured and to the public, such as assaults and batteries, malicious trespass, libel and the like. In any such case the party may be punished criminally, and the injured party may prosecute a civil action and recover, not only actual, but punitive damages. And the civil remedy has been extended by statute to the personal representative, or husband or wife, or parent or child, of the injured party, who may recover against the wrongdoer in cases of manslaughter or murder, when the deceased might have maintained an action for the injury had he lived. On the other hand, some acts which are merely private trespasses are punishable criminally, such as unlawfully damaging or taking fruit from a tree, or willfully destroying

property or crops, or cutting and removing timber, removing stone, etc., from the realty."

Here you have a rule of civil conduct laid down in one section of law and in another section a criminal penalty provided where one's prescribed conduct falls short of statutory requirements. There is nothing unusual in a section of a statute setting out a precise and prescribed rule of civil conduct, and in another section providing a penalty for a violation thereof. Where such is the case crimes have been alleged and proved under the very motor vehicle law now under consideration.

It is not unusual for unlawful conduct to give rise to both tort action and criminal action.

We are of the opinion that section 7775, construed together with paragraph (d) of section 7786 defines a crime which is punishable under the Missouri Code as other crimes are punishable.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

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