

HIGHWAY DEPARTMENT:) Sections 10991 and 11014, R. S. 1929, have
LEVEES:) reference to State built levees.
Prosecutions for government built levees
under Federal law.

January 29, 1936.

1-29



Honorable Louis V. Stigall
Chief Counsel
State Highway Department
Jefferson City, Missouri

LEGAL: Mississippi
County Location of
Road on Levee

Dear Mr. Stigall:

This is to acknowledge your letter of recent date in which you request this Department to reinstate your former request for an opinion, which had previously been withdrawn by you, with reference to the construction of a public highway on Federal Government levees in Mississippi County, Missouri.

We have referred to your former correspondence concerning this matter and the question asked is based on the following statement of facts submitted in your letters, viz.:

The Federal Government has heretofore constructed a levee in Mississippi County, Missouri, under the authority of U. S. C. A., Title 33, Section 702a, and succeeding sections, for flood control on the Mississippi River. The State Highway Department since the construction of the above levee has built, with the consent of the Federal Government, 6½ miles of gravel roadway on top of said levee from Wyatt to Birds Point, Mississippi County, Missouri, and the same has been in use for sometime by the general public as a public highway.

The question you ask is whether or not the top of the government built levee may be used by the State Highway Department in the construction of a road thereon and may be then used by the public as a roadway, in view of Sections 10991 and 11014, R. S. Mo. 1929?

Section 10991, supra, is a part and parcel of Article 7, Chapter 64, R. S. Mo. 1929, pertaining to the organization of levee districts by county courts, and is as follows:

"It shall be unlawful for any person to use the levees built under the provisions of this article as a roadway, by riding any horse, mule or ass thereon, or by driving any vehicle thereon; and any person violating this provision shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten nor more than fifty dollars, or imprisoned in the county jail not less than fifteen days nor more than thirty days for each offense, or both such fine and imprisonment, at the discretion of the court having jurisdiction of the same."

It will be noted by the above section that it is a violation of the law and one is guilty of a misdemeanor "to use the levees built under the provisions of this article as a roadway, by riding any horse, mule or ass thereon, or by driving any vehicle thereon; * * *." This being a penal statute, it is elementary that it must be strictly construed. An information or indictment drawn under the provisions of this section would, to be sufficient, necessarily have to charge, and it would be essential to prove, to secure conviction, that the levee was built under the provisions of Article 7, Chapter 64, R. S. Mo. 1929.

Assuming, as you state in your letter, that the above levee was constructed by the United States Government and not under Article 7 aforesaid, it would not be a violation of Section 10991 for one to commit the aforesaid prohibited acts on a government built levee.

Section 11014, R. S. Mo. 1929, provides as follows:

"It shall be unlawful for any person, persons, association or corporation to fill up, or cause to be filled up, injure, impair or destroy the usefulness of any drain, levee, ditch, dike revetment or other works now constructed or hereafter constructed in any drainage or levee districts organized under the provisions of any previous existing or future laws of Missouri, relating to the formation of drainage or levee districts (to reclaim swamp, wet and overflowed lands for sanitary or agricultural purposes). It shall also be unlawful for any person, persons, association or corporation to in any manner throw or cause to be thrown, fall or cause to be fallen, place or cause to be placed, floated or cause to be floated any tree, tree top, brush, log or other substance in any drain, ditch, floodway, basin or other works constructed by any drainage district constructed in this state; or to build any fence, dam, or other works across any such ditch; or to pasture any stock on any levee or right of way of any levee while the waters in the river or rivers, are at or near flood stage in such rivers; or to use any such levee for road purposes by driving or riding any ass, mule, horse or oxen on the top or on the side of any levee at any time. Any person violating the foregoing or any one of the foregoing provisions shall be guilty of a misdemeanor and upon conviction shall be fined for each and every offense a sum not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than

thirty nor more than two hundred days or by both such fine and imprisonment: Provided, that when a corporation has been found guilty of violating any of the foregoing provisions the president, director, manager or other employe of such corporation having charge of the work under which the violation occurred shall be subject also to the foregoing penalties."

It will be noted that said section by its provisions sets forth several distinct misdemeanors for crimes that might be committed on drains, levees, ditches, dikes, revetments or other works in any drainage or levee district organized under the provisions of any previous existing or future laws of Missouri, relating to the formation of drainage or levee district (to reclaim swamp, wet and overflowed lands for sanitary or agricultural purposes). This section is also directed at drainage or levees constructed under the provisions of the Missouri statutes and provides penalties for violations thereof.

Both of these sections refer to levees built under State laws and have no reference to those built by the Government for flood control. The United States Government, by statutes, has made ample provisions for prosecutions for injuries and damages done to Federal built levees. Section 408, Title 33, U. S. C. A.; *Houck v. U. S.* (Mo. 1912), 201 Fed. 862, 122 C.C.A. 200.

Conclusion.

It is, therefore, the opinion of this Department that the two sections referred to in your letter, namely, Sections 10991 and 11014, R. S. Mo. 1929, pertain to and are applicable to levees built under the state laws, and do not have reference to government built levees.

Very truly yours,

CRH:EG
APPROVED:

COVELL R. HEWITT
Assistant Attorney-General