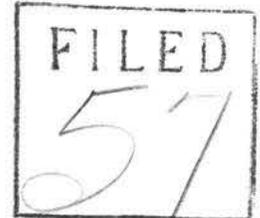


**MOTOR VEHICLES:** Attempted sale of motor vehicle without transfer of certificate of title is a crime, subjecting both buyer and seller to prosecution.

December 18, 1937

Hon. C. Logan Marr  
Prosecuting Attorney, Morgan County  
First National Bank Building  
Versailles, Missouri



Dear Sir:

This department is in receipt of your letter of December 7 in which you say:

"In this county where there are quite a few model T. Fords left, there is car trading without a transfer of the certificate of title. After reading section 7774 of the 1929 statutes, the question has been raised as to whether the failure to assign and transfer the certificate of title to a car sold and possession is a crime? The transaction as such is unlawful and the same fraudulent and void, but does that create a crime? Who would you prosecute, if the failure to assign the certificate of title, is a crime, the buyer or the seller? If the State prosecuted both, how could a sale be proven, and then the failure to assign the title be proven?"

Your first question is whether the attempted sale of a motor vehicle without an assignment of the certificate of title as required by subdivision (c) of Section 7774, R.S. Missouri, 1929, is a crime.

A crime has been defined as "an act or omission which is prohibited by law as injurious to the public and punished by the state in a proceeding in its own name or in the name of the people or the sovereign". Words and Phrases, Third Series, page 693.

In the early case of *City of Kansas v. Clark*, 68 Mo. 588, l.c. 589, the Supreme Court of Missouri defined a crime in the following language:

"A crime is an act committed in violation of a public law; 4 Black. Com., a law co-extensive with the boundaries of the State which enacts it'."

This definition has been quoted with approval in the later cases of *City of St. Louis v. Tielkemeyer*, 226 Mo. 130, l.c. 141, 125 S.W. 1123; *State v. Mills*, 272 Mo. 526, l.c. 537.

In a later case of *State v. Thomas*, 318 Mo. 605, l.c. 610, 300 S.W. 823, the Supreme Court of Missouri defined a crime as follows:

"A crime is an offense against the state, directly or indirectly affecting the public, to which the state has annexed certain punishments and penalties, and which it prosecutes in its own name in what is called a criminal proceeding."

Section 4474, R.S. Missouri, 1929, defines "crime" when used in the Statutes of Missouri, as follows:

"The terms 'crime', 'offense', and 'criminal offense', when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted."

Words and Phrases, Second Series, page 691, reads as follows:

"An offense, in its legal signification, means the transgression of a law."

Looking to subdivision (c) of Section 7774, under consideration, we find the following:

"In the event of a sale or transfer of ownership of a motor vehicle or trailer for which a certificate of ownership has been issued the holder of such certificate shall endorse on the same an assignment thereof, with warranty of title in form printed thereon, and prescribed by the commissioner, with a statement of all liens or encumbrances on said motor vehicle or trailer, and deliver the same to the buyer at the time of the delivery to him of said motor vehicle or trailer.

\* \* \* \* \*

Four months after this law takes effect and thereafter, it shall be unlawful for any person to buy or sell in this state any motor vehicle or trailer registered under the laws of this state, unless, at the time of the delivery thereof, there shall pass between the parties such certificate of ownership with an assignment thereof, as herein provided, and the sale of any motor vehicle or trailer registered under the laws of this state, without the assignment of such certificate of ownership, shall be fraudulent and void."

Subdivision (d) of Section 7786, R.S. Missouri, 1929, provides the penalty for violation of the provisions of subdivision (c) of Section 7774, said subdivision reading as follows:

"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."

We are unable to find where the appellate courts have passed upon any criminal conviction under this statute. (subdivision (c), Section 7774, supra). In the case of State ex rel. v. Cox, 306 Mo. 537, l.c. 546, 268 S.W. 87, the Supreme Court in commenting upon the above section of the statutes, used the following language:

"The above Act of 1921 not only required Robertson to make an assignment on the back of his certificate of title as a condition precedent to his making a valid sale of the machine, as above quoted, described an attempted sale without a compliance with the requirements aforesaid as fraudulent and void. In addition to foregoing, Section 29 of said act makes the violation of the requirements aforesaid, a criminal offense."

While the above case was a civil case and the statement by the court as above set forth was somewhat obiter, yet we think that that portion of the opinion has some weight in determining the question we are now considering, namely, whether the attempted sale of a motor vehicle without delivery of certificate of title properly assigned, is a crime.

From the above authorities, we conclude that the attempted sale of motor vehicles in Missouri without there passing between the parties a certificate of ownership with an assignment thereof, as provided by Section 7774, is a crime, subjecting both the buyer and seller to the penalties prescribed by subdivision (d) of Section 7786, supra.

We think the foregoing answers your second question as to who should be prosecuted. Both buyer and seller are subject to the penalty, and if sufficient evidence of such attempted sale and violation of Section 7774 could be established, we see no reason why either or both of the parties should not be prosecuted.

As to how a sale might be proved if both buyer and seller were being prosecuted, we could not definitely say. Each case would have to be proved from the evidence available, just as any other case might be proved. We might suggest that the delivery of a check in payment of

the consideration for a sale, the delivery of the possession of the motor vehicle sought to be sold, admissions by either of the parties, or evidence of bystanders, might be circumstances which would tend to prove the attempted sale of the motor vehicle.

CONCLUSION

It is, therefore, the opinion of this department that the attempted sale of a motor vehicle without there passing between the buyer and seller a certificate of title properly assigned by the seller in accordance with subdivision (c) of Section 7774, R.S. Missouri, 1929, is a crime; that both buyer and seller participating in such attempted sale are subject to prosecution; and that either or both the buyer and seller against whom, in the judgment of the Prosecuting Attorney, a case could be made, should be prosecuted.

Respectfully submitted,

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Assistant Attorney General

APPROVED by:

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J.E. TAYLOR  
(Acting) Attorney General

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