MOTOR VEHICLE: Persons charged with the larceny of a motor vehicle or any part thereof, when found guilty, the punishment shall be assessed in accordance with the provisions of the Motor Vehicle Act.

January 8, 1937

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Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads as follows:

> "Having received a cost bill from Douglas County, Missouri, which shows the following state of facts:
>
> "The defendant was charged with the crime of grand larceny, the information charging that the defendant did feloniously take, steal and carry away certain parts for equipment of a motor vehicle over the value of $30.00, and the instruction on the punishment in the case given by the Court was for a term of not less than two nor more than five years in the state penitentiary.
>
> "Therefore, we desire an opinion from your office on the following question:
>
> "If a defendant is charged under Section 4064 R. S. Mo. 1929, with the larceny of a motor vehicle or any part, tire or equipment of a motor vehicle of a value of $30.00 or more, is the punishment assessed under Section 4065, R. S. Mo. 1929, or Section 7786, R. S. Mo. 1929?"

Under the provisions of Section 4065, R. S. Mo. 1929,

persons convicted of the larceny of a motor vehicle were punished in the penitentiary for a term not exceeding ten years. This was prior to the enactment of what is known as the motor vehicle act of 1921, passed at an Extra Session of the Legislature.

Under the provisions of Section 7786, R. S. Mo. 1929, which is a part of the Motor Vehicle Act, certain penalties were provided for any person convicted of feloniously taking or carrying away any motor vehicle or any part thereof of the value of thirty dollars ($30.00) or more. Under another subdivision of the same section, other penalties were prescribed ranging from a fine, jail sentence or term in the penitentiary.

Under the provisions of Section 7758, R. S. Mo. 1929, it is provided in effect and substance that the motor vehicle act, passed at the extra session of the Legislature of 1921, should exclusively control concerning motor vehicles. It is further provided in substance and effect that any and all laws inconsistent with or contrary to the provisions of the act should be void.

In the case of State v. Liston, 2 S. W. (2d) l. c. 784, the Court had before it for consideration an instruction which directed the jury as to the amount of punishment to be given in the event they found the defendant guilty of the crime as charged under the provisions of Section 4064. The Court held that this instruction misdirected the jury as to the range of punishment, and, in passing upon said instruction said:

> " * * * Section 29 of the Motor Vehicle Act of 1921 provides that any person who shall be convicted of feloniously stealing any motor vehicle, or any part thereof, of a value of $30.00 or more, 'shall be punished by imprisonment in thepenitentiary for a term not exceeding twenty-five years or by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars ($1,000) or by both such fine and imprisonment.' (Italics ours.) Moreover, section 31 of said act provides that all laws or parts of laws contrary to, inconsistent, or in conflict with, any of the provisions of said act, are repealed, and the repeal of such laws is properly referred to and covered by the title of said act. Laws Ex. Session 1921, pp. 76, 105, 106. Thus, it plainly appears that the jury

> was improperly instructed as to the range of punishment for this offense, as prescribed by law at the time in question, and that appellant was thereby deprived of a substantial right--that is, the right to have the jury consider a less severe punishment than the minimum punishment fixed by the instruction mentioned. * * * "

CONCLUSION

It is the opinion of this department that if any person is charged with the larceny of a motor vehicle or any part thereof under the provisions of Section 4064, supra, that the punishment if said person is found guilty shall be assessed under the provisions of Section 7786, supra, and not under the provisions of Section 4065, supra.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

A. E. Taylor
(Acting) Attorney General