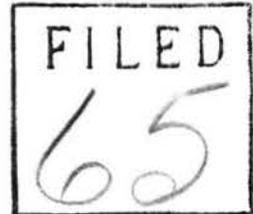


MOTOR VEHICLES:

Section 7774 is to be treated as a criminal statute.

February 17, 1938

2-19



Mr. Charles E. Murrell, Jr.,
Prosecuting Attorney,
Adair County,
Kirksville, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated February 11, 1938 requesting an opinion which is as follows:

"I would like to have an opinion from your office, on the following questions:

- (1) Is the seller of a motor vehicle, who sells a motor vehicle, and fails to deliver a Certificate of Title, subject to prosecution under the Criminal Laws?
- (2) Is Section number 7774 to be treated as a Criminal Statute upon the violation of the terms of said Section?"

Section 7774 of Article I, chapter 41 of R.S. Mo. 1929 reads as follows:

"***** 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. The buyer shall then present such certificate, assigned as aforesaid, to the commissioner, at the time of making application for the registration of such motor vehicle or trailer, whereupon a new certificate of ownership shall be issued to the buyer, the fee therefor being \$1.00. *****"

The word "shall" has been interpreted in the case of State ex rel Stevens v. Wurdeman, 246 S.W. 189, paragraph 7; 295 Mo. 566:

"These are criminal statutes, and should be strictly construed in the interest of the liberty of the citizen. The statute says the defendant 'shall be entitled to be discharged' save in the two excepted situations, supra. Usually the use of the word 'shall' indicates a mandate, and unless there are other things in a statute it indicates a mandatory statute. Especially is this true in a statute calling for strict construction."

Section 7786, paragraph D specifically sets out punishment in various sections of article I, chapter 41 and then sets out a punishment of the violation of other provisions of the article. Section 7786, paragraph D of article I, chapter 41 reads as follows:

"(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."

In Section 7774 a provision is made, however, as to dealers of any cars which does not require a certificate as provided in the body of Section 7774. This provision reads as follows:

"***** 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.*****"

February 17, 1938

Provided, however, that no such certificates shall be required in the case of new motor vehicles or trailers sold by manufacturers to dealers. Dealers shall execute and deliver bills of sale in accordance with forms prescribed by the commissioner for all new cars sold by them. On the presentation of a bill of sale, executed in the form prescribed by the commissioner, by a manufacturer or a dealer for a new car sold in this state, a certificate of ownership shall be issued. *****."

CONCLUSION

It is the opinion of this office that a seller of a motor vehicle who fails to deliver a certificate of title, is subject to prosecution under the criminal laws and it is also the opinion of this office that Section 7774 is to be treated as a criminal statute upon the violation of the terms of said section.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

WJB:DA