

HIGHWAY PATROL; Motor Vehicles and Stolen Property:

Motor vehicles seized by highway patrol should be held by them subject to the order of the court having jurisdiction of the offense in connection with which they are seized.

3-29
March 28, 1940.

Missouri State Highway Patrol,
Jefferson City, Missouri.

Attention: Captain R. E. Moore,
General Headquarters.



Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this Department based on the following statement of facts:

"A stolen car is recovered by the State Highway Patrol and stored in a private garage pending the establishment of ownership. The owner is notified to appear and claim the car, but in the meanwhile an insurance company who holds a mortgage on the car appears to claim it on the grounds that the registered owner is in arrears on his payments and they have the right under their contract to take possession wherever they may find the car. To whose custody should the car be released?

A car comes into the temporary possession of the patrol by virtue of the owner being arrested and held for some offense. A finance company who holds a mortgage on the car hears of the location of the car being held and appears to claim the car on the grounds that the payments are in arrears and they have the right under contract to take possession of the car wherever they may find it. Should the member of the patrol release the car to the claimant, and if so, is he liable for damages to the registered owner on the grounds that the owner has an equity in the car and might be deprived of such equity by this action?

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What right has a member of the patrol to impound or hold for any purpose whatsoever, except for the purpose of evidence, the motor car of any person arrested for an offense against the laws of this state which does not call for confiscation of such equipment?"

The State Highway Patrol is a creature of the statute, and we must look to that statute for its powers and duties. This rule is announced and applied so often and generally that we do not deem it necessary to cite authorities in support of it.

Referring to the statutes under which the patrol is created we find that in 1931 the highway patrol act was passed and that, at page 234 Laws of Missouri 1931, Sections 12, 13 and 14, the duties of the patrol are set out. These sections provide as follows:

"Section 12. It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs

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licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes.

Section 13. The members of the patrol are hereby declared to be officers of the state of Missouri and shall be so deemed and taken in all courts having jurisdiction of offenses against the laws of this state. The members of the patrol shall have the powers now or hereafter vested by law in peace officers except the serving or execution of civil process. The members of the patrol shall have authority to arrest without writ, rule, order or process any person detected by him in the act of violating any law of the state. When a member of the patrol is in pursuit of a violator or suspected violator and is unable to arrest such violator or suspected violator within the limits of the district or territory over which the jurisdiction of such member of the patrol extends, he shall be and is hereby authorized to continue in pursuit of such violator or suspected violator into whatever part of this state may be reasonably necessary to effect the apprehension and arrest of the same and to arrest such violator or suspected violator wherever he may be overtaken.

Section 14. Any person arrested by a member of the patrol shall forthwith be taken by such member before the court or magistrate having jurisdiction of the crime whereof such person so arrested is charged there to be dealt with according to law."

Your request pertains principally to cars which have been seized by the Highway Patrol either because the same are stolen or were used in connection with some criminal offense. Our general statutes have made provision for the disposition of such property.

Section 3774 R. S. Mo. 1929, provides as follows:

"When property alleged to have been stolen, purloined, embezzled or obtained by false pretenses, or to have been obtained in any of the modes specified in the article concerning offenses against public and private property, shall come into the custody of any sheriff, coroner, constable, marshal, or any person authorized to perform the duties of such officers, he shall hold the same subject to the order of the court or officer authorized to direct the disposition thereof."

It will be noted that this section in addition to providing for the disposition of property which is stolen, purloined, embezzled or obtained by false pretenses, applies also to properties which have been obtained in any of the modes specified in the article concerning offenses against public or private property.

Article 5 of Chapter 30, which includes Sections 4036 to 4174, inclusive, relates to offenses against property which would include both public and private property. There are so many different offenses named in this article that we are not specifying them here, but will say that this article applies to almost any offense that might be committed against public and private property. Therefore, any property obtained by the officers in the enforcement of the provisions of said article 5 would be held and disposed of as is provided by said Section 3774.

Section 3775 R. S. Mo. 1929, provides as follows:

"Upon receiving satisfactory proof of the title of any owner of such property, the magistrate who shall take the examination of the person accused of any of the offenses referred to in the preceding section, may order the same to be delivered to such owner, on his paying the reasonable and necessary expenses incurred in the preservation of such property, to be certified by

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such magistrate, which order shall entitle the owner to demand and receive such property."

Following that section is Section 3776, which authorizes the magistrate to deliver to the owner, on proper proof, such property after necessary expenses for preservation have been paid.

Section 3777 provides that the court, after conviction and upon proof of ownership of such property, may direct it to be turned over to the proper owner after having paid the necessary expenses incurred in the preservation of such property.

We refer particularly to these sections for we think this is the plan by which the lawmakers have intended to handle and dispose of property seized by the officers in connection with the enforcement of the criminal laws of the state. This property is sometimes held until the case is finally disposed of and then released to the rightful owner.

In the case of State of Missouri v. Rebasti, 267 S. W. 858, at page 860, the court, in discussing the authority of officers to seize and hold the property of the defendant for evidence said:

"Being lawfully arrested the officers have a right to seize him and his possessions in the room where he was arrested and take from him any article which might be used in securing his conviction." (Citing cases.)

The cases cited in the Rebasti case, supra, hold that any evidence legally seized by the officers may be held as evidence pending the final determination of the offense for which the defendant is arrested.

In the case of State of Missouri ex rel. Zimmerman v. Schaper, 152 Mo. App. 538, a constable was sued on his bond for keeping dangerous explosives which he had

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seized from a party who was charged with concealing such explosives. In that case the court held that since the charge of keeping dangerous explosives was not one of the cases in which the officer was authorized to take possession of the property as directed by Section 3774, then the constable was not acting in his official capacity and would only be liable personally for any damages which resulted on account of the explosion of the dynamite which he had in his possession.

We are calling attention to this particular case for the reason that there are instances in which the officer is not authorized to seize and hold certain properties. Since the Highway Patrol Act, Section 13, provides that the members of the patrol shall have the powers now or hereafter invested by law in peace officers, the same rule would apply to the powers of the patrolmen to seize properties as apply to any other peace officer.

Referring to the second paragraph of your request, then, and applying the provisions of the statute hereinabove cited relating to the disposition of property seized by an officer, it would seem that the duty of the highway patrol, when any of the members seize a car, or any other property, which is stolen or under suspicion of having been stolen, is to hold this property subject to the order of the court or officer authorized to direct the disposition thereof.

Under this second paragraph you state a case where the patrol comes into possession of a car by virtue of the owner being arrested and held for some offense. Since it seems from the statutes referred to above pertaining to disposition of property which has been seized by an officer in connection with his duties in the enforcement of the criminal laws of the state that such property should be placed in the custody of the court, then as a practical proposition and a safe way to handle such property, we think that the patrol should not act as a judge on the question of ownership, but should release the property under the order of the court in which the offense is pending under which the defendant is charged and the property held. While the mortgagee may

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have a contract with the owner of the car, which would authorize it to take possession of the car under certain contingencies, yet, we think that the patrol when it seizes such an automobile would be exercising its powers more carefully by requiring such mortgagee to make its proof of right of possession to the court having jurisdiction of the case before releasing such property.

On your last question, as to the rights of the patrol to impound or hold for any purpose whatever, except for the purpose of evidence, a motor car of any person arrested for an offense against the laws of this state which does not call for confiscation of such property, will say, applying the foregoing rules to the powers and duties of the officer in such cases, and, since we do not find any statutory authority which would authorize the patrol to impound or hold property other than set out in the statutes hereinabove referred to, we do not think the highway patrol has authority to impound and hold any property except for the purpose of evidence, and then he holds this property subject to the order of the court in which the charge is pending.

CONCLUSION.

From the foregoing, and answering your first question, it is the opinion of this Department that when the highway patrol has seized an automobile or any other property in connection with the violation of a criminal law that it should only dispose of this property subject to the order of the court in which the offense is pending.

Second. Answering your second question, it is the opinion of this Department that since the patrol is not authorized under the statutes to pass on the question of ownership of a motor vehicle which has been seized by the patrol, that it should not release the motor vehicle to any person other than the owner without the order of the court which has jurisdiction over the offense in connection with which the motor vehicle was seized.

Third. Answering your third inquiry, it is the opinion of this Department that the highway patrol is not authorized to impound or hold for any purposes what-

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soever, except for the purpose of evidence, the motor vehicle or any other property found in the possession of a person who is arrested for the violation of some criminal law of this state.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General.

TWB:CP