

CRIMINAL LAW:

CHATTEL MORTGAGES:

Prosecution may be instituted under Section 4492 R.S. Mo. 1939 in county from which mortgaged personal property is fraudulently removed.

April 5, 1950

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Honorable Joe C. Welborn,  
Prosecuting Attorney,  
Stoddard County,  
Bloomfield, Missouri.



Dear Mr. Welborn:

We have your recent request for an opinion from this office. Your letter is as follows:

"I would like an official opinion from your Department on the following proposition. A mortgagor owned mortgaged property which was located in Stoddard County. He loaded the property on a truck, which he himself had hired for the occasion, and took the property to an auction barn in Butler County, Missouri and sold the mortgaged property. I am wondering whether or not prosecution for disposing of the mortgaged property would lie in Stoddard County."

Section 4492 R.S. Mo. 1939, which covers the situation you describe is as follows:

"Every mortgagor or grantor in any chattel mortgage or trust deed of personal property who shall sell, convey or dispose of the property mentioned in said mortgage or trust deed, or any part thereof, without the written consent of the mortgagee or beneficiary, and without informing the person to whom the same is sold or conveyed that the property is mortgaged or conveyed by such deed of trust, or who shall injure or destroy such property, or any part thereof, or aid or abet the same, for the purpose of defrauding the mortgagee, trustee or beneficiary or his heirs or assigns, or shall remove or conceal, or aid or abet in removing or concealing such property, or any part thereof, with intent to hinder, delay or defraud such mortgagee, trustee or beneficiary, his heirs or assigns, shall,

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if the property be of the value of fifty dollars or more, be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding six months, or by a fine of not less than one hundred dollars, or by both such fine and imprisonment. And if such property be of less a value than fifty dollars he shall be deemed guilty of a misdemeanor and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one hundred dollars, or by both such fine and imprisonment."

Your question is whether or not a prosecution would lie, in Stoddard County, for removing mortgaged property from Stoddard County with intent to hinder, delay, or defraud the mortgagee, as set out in said Section 4492.

In State v. Miller 255 Mo. 223, the Supreme Court held that this section creates three separate and distinct offenses. The significant part of the opinion in that case is as follows:

"\* \* \* Section 4570 (now 4492) under which the charge in the case is brought, contains three separate and distinct offenses - which are either felonies or misdemeanors according as the amount or value of the property dealt with shall be found to be greater or less than fifty dollars. These three offenses consist: (a) of selling, conveying or disposing of mortgaged chattels; (b) of injuring or destroying or aiding and abetting in injuring or destroying such chattels, and (c) of removing or concealing, or aiding in the removing or concealing of the same, with certain conditions precedent and intent, more at length in the statute set out, but not necessary to be adverted to for our present purpose."

(Words in parenthesis ours)

State v. Griffin 228 S.W. 800 is a case very pertinent here. The following is quoted from pp. 803 and 804 of that case:

"\*\*\*\* The defendant, after the execution of said chattel mortgage, had no more right to remove or



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conceal said property than he would have had, if the chattel mortgage had been executed originally instead of the contract. In other words, it was just as much a violation of section 4570, R.S. 1909, to remove and conceal the property covered by the chattel mortgage on defendant's equity of redemption as it would have been had the chattel mortgage covered the legal title as well. The purpose of the statute was to prevent parties from removing and concealing the property which they had conveyed, in either form, for the purpose of hindering, delaying, or defrauding the mortgage.

\* \* \* \* \*

"In our opinion, section 4570, R.S. 1909, was enacted to meet just such an emergency. Possession of this car had been delivered to defendant in May, 1916. It had been removed from his possession prior to May, 1917. By his acts and conduct he attempted to deceive the mortgagee's agents as to the presence of the car, refused to pay the balance of the mortgage debt, refused to tell where the car was located, and refused to turn over same to the Weber Company or its agents. From the foregoing facts the jury would have the right to infer that defendant had removed said car from his own possession, concealed its location, and had placed it beyond the reach of the Weber Motor Car Company, for the purpose of hindering, delaying, or defrauding said company. If the jury found the foregoing facts from the evidence, they had the right to convict defendant of a felony, if the property in value was equal to or exceeded \$50; and if less than \$50 in value, to find him guilty of a misdemeanor, as designated in said section 4570.

"If defendant's contention should obtain, as to the meaning of said section, then all a mortgagor would have to do, in order to nullify the mortgage, would be to have the property removed from his own possession, conceal the locality where it was taken, deceive the mortgagee as to what became of it, refuse to deliver possession as required by the mortgage, and thus evade both the criminal laws of our state and his obligation to pay the balance of the debt."

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The latest applicable case construing Section 4492, supra, is State v. Nienaber 148 S.W. (2d) 537. The following quotations are from that case:

"By an information filed in the Boone County Circuit Court appellant was charged with a violation of section 4100 R.S. Mo. (now 4492) 1929, Mo. St. Ann. S. 4100, page 2900 in that he removed from the county of Boone in the state of Missouri mortgaged property, to-wit, fifteen head of two-year old steers valued at \$729, with the intent to hinder, delay and defraud the mortgages.

\* \* \* \* \*

"In that case (State v. Miller, supra) the defendant was charged in one count of the information with removing and concealing mortgaged property and also with selling and conveying the property. This court held the information defective because it charged two distinct and separate offenses. We have no fault to find with that ruling. It does not follow, however, that an information must charge in the conjunctive all the acts mentioned in any one of the three groups. In other words, to charge in an information that the defendant injured mortgaged property would be sufficient, or that he disposed of the property. So if a defendant were charged with concealing mortgaged property the information would be sufficient. An information may charge, without being duplicitous, that a defendant removed and concealed mortgaged property, but that is not mandatory. We are of the opinion that an offense is complete when mortgaged property is removed from the county and state without the consent of the mortgagee and with intent to defraud such mortgagee. A reading of the statute and the case above referred to leaves no room for any other conclusion. \* \* \* "

(Words in parenthesis ours)

In passing, it might be helpful to point out, that although the last part of the above quotation states that the offense is complete when the property is removed from the county "and state," it does not mean that to complete the offense, the mortgaged property must actually be taken out of the state. In the Nienaber



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case, supra, the facts disclose that property was actually taken out of the state, and it is believed that this latter fact is responsible for the inclusion of the words "and state;" for the statute itself does not require removal from the state, nor do any of the other cases construing this section suggest that removal from the state is a pre-requisite to prosecution.

It is, therefore, very clear, from the wording of the statute itself, and the cases construing it, that the mere removal from the county, of mortgaged property, with intent to hinder, delay or defraud the mortgagee, is an offense under Section 4492.

CONCLUSION

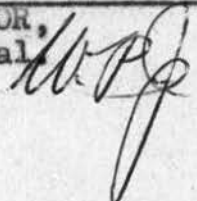
It is, therefore, the opinion of this office that a prosecution may be instituted, under the provisions of Section 4492, in the county from which mortgaged property is fraudulently removed.

Respectfully submitted,

H. JACKSON DANIEL,  
Assistant Attorney General.

APPROVED:

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J. E. TAYLOR,  
Attorney General



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