

CRIMINAL PROCEDURE: It would not be permissible to join a felony and a misdemeanor in the same indictment or information.

April 20, 1951



4-23-51

Mr. J. L. Bess
Prosecuting Attorney
Howell County
West Plains, Missouri

Dear Mr. Bess:

We have given careful consideration to your recent request for an official opinion, which request is as follows:

"Our local Magistrate and myself have been discussing the proper procedure in the handling of drunken driving and careless and reckless driving cases. Due to the fact that we have a good many cases of this type and character and that local attorneys are taking changes of venue constantly in the misdemeanor cases, we have been made to wonder if it would be permissible to join in one complaint or information two counts and then elect to stand on one or the other and accept a plea to the lesser charge in Magistrate Court in cases where thought best. This would avoid having to dismiss the case outright and file a new case under the misdemeanor statute and thus make additional expense."

Drunken driving, as defined in Sections 564.440 and 564.460, RSMo 1949, is a felony. Careless and reckless driving, as defined in Sections 304.010 and 304.570, RSMo 1949, is a misdemeanor. Now, as we understand your problem, you want to know if it would be permissible to join a felony and a misdemeanor in one information in magistrate court.

This cannot be done in any court. The Supreme Court of Missouri sustained this principle in the case of State v. Kurtz, 317 Mo. 380. In the course of that opinion, on page 386, the court said;

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"Under our practice it is error to join counts in the same indictment or information charging a felony and misdemeanor. (Storrs v. State, 3 Mo. 9; Hilderbrand v. State, 5 Mo. 548.) It may be taken advantage of either by demurrer or motion in arrest and as defendant complains of the joinder in his motion for a new trial which has been substituted for the motion in arrest (Laws 1925, sec. 4080, p. 198), the question is preserved. The joinder constituted error."

CONCLUSION

It is the opinion of this office that the offenses of driving a motor vehicle while intoxicated, a felony, and careless and reckless driving, a misdemeanor, cannot be charged in the same information, either in magistrate court or circuit court.

Respectfully submitted,

B. A. TAYLOR
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APPROVED:



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