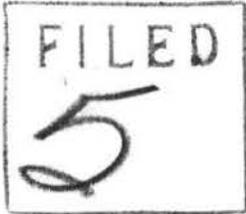


CRIMINAL LAW: Mere accidental dropping of dangerous substances
HIGHWAYS: upon highways is not alone a criminal offense.
MOTOR VEHICLES: Penalty for violation of Section 304.160, RSMo
1949, provided by Section 304.570, RSMo 1949.



March 30, 1953

Honorable Harold W. Barrick
Prosecuting Attorney
Pettis County
Sedalia, Missouri

Dear Mr. Barrick:

By your letter of March 10, 1953, you request an official opinion of this office. Your request was phrased, in part, as follows:

"I herewith request an opinion from your office with regard to the above numbered section, 304.160, R.S.Mo., 1949.

"My specific question is this: Is the driver of a vehicle criminally liable, under this section, when the dangerous substances named in the section are accidentally dropped from his vehicle? Is the driver subject to the punishment as set out in Section 304.570, R.S.Mo., 1949?"

Sections 304.160 and 304.570, RSMo 1949, are quoted herewith:

"304.160. Placing glass, etc., on highway prohibited. -- No person shall throw or place, or cause to be thrown or placed, on or upon any highway, any tacks, nails, wire, scrap metal, glass, crockery, sharp stones, or other substances injurious to the feet of persons or animals, or to the tires or wheels of vehicles, including motor vehicles. Any person who has purposely, accidentally, or by reason of an accident, dropped from his

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person or any vehicle, any such substance upon the highway, shall immediately make all reasonable efforts to clear such highway of the same."

"304.570. Penalty for violations. -- Any person who violates any of the provisions of this chapter for which no specific punishment is provided, upon conviction thereof, shall be punished by a fine of not less than five dollars nor more than five hundred dollars or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

To determine whether an offense under the above sections has been committed, it is necessary to ascertain the intent required to make criminal the commission of the act prohibited, or failure to perform the act required to be performed.

22 C.J.S. 87 sets forth the following text as to what intent is required in statutory criminal offenses:

"Whether or not criminal intent or knowledge is an element of a statutory crime is a matter of statutory construction to be determined in a given case by considering the subject matter of the prohibition as well as the language of the statute, and thus ascertaining the intention of the legislature. * * * "

The two sentences of Section 304.160, supra, should be examined separately. The first sentence creates a prohibition against placing certain articles and substances upon the highway. The second sentence imposes a duty to remove such articles and substances from the highway. In the first sentence there is no specific provision for punishing accidental dropping, but in the second sentence, there is specific provision for dealing with dangerous articles and substances that have been accidentally dropped upon the highway.

In further construing Section 304.160, supra, the words of action constituting the offense, to wit: 'throw' and 'place', should be defined. In Webster's New International Dictionary, Second Edition, Unabridged, 'place' is defined as follows:

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"1. To put in a particular spot or place, or in a certain relative position; to fix; settle; locate; dispose; as to place a book on a shelf. * * * "

'Throw' is defined by the same authority as follows:

"5. To fling, cast, or hurl, with a certain whirling motion of the arm; as to throw a ball; hence, to fling or cast in any manner; to propel; hurl; send; * * * "

The two above words both connote a definite intent to perform such action. However, the word 'accident' is defined as:

"1. Literally, a befalling. (a) An event that takes place without one's foresight or expectation; an undesired, sudden, and unexpected accident * * * "

Examination of the definitions of the words 'throw', 'place' and 'accident' leads to the conclusion that before criminal penalty can be invoked, under the first sentence of Section 304.160, supra, there must be a definite intent to have the proscribed substance or article upon the highway.

The question arises under the second sentence as to whether one may be held liable for failing to make all reasonable efforts to clear the highway of substances dropped without the knowledge of the person dropping it.

Strict liability has been imposed by statute upon persons engaged in selling foods, drugs and alcohol. It has been imposed upon operators of automobiles, and imposed for violations of regulations concerning safety of the highway. Thus in Regina v. Woodrow, 115 M & W 404, 153 Eng. Reps. 907, a tobacco dealer was held liable to a penalty for having in his possession adulterated tobacco, although he purchased it as genuine, and had no knowledge or cause to suspect that it was adulterated. The statute under which the defendant was prosecuted was an amendment to a previous act, wherein knowledge of adulteration was essential, and the amendment was for the express purpose of removing the required element of knowledge.

In the case of Commonwealth v. Farren, 91 Mass. 489, a

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person selling adulterated milk was convicted, even though he had no knowledge that the milk was adulterated. In this instance, the statute under which the defendant was prosecuted was an amendment of a previous statute requiring knowledge of adulteration. The amendment was for the purpose of eliminating the knowledge requirement.

In the case of Hayes v. Schueler, 107 Kan. 635, 193 Pac. 311, the conviction of the defendant for violation of a city ordinance, requiring a motor car to display a red rear light at night, was upheld, even though the light became extinguished without knowledge of the defendant.

In the cases cited above, the statutes were either re-enactments of previous statutes wherein knowledge of violation was required, or else the statute, by its language, was subject to no other interpretation.

Since it is an elementary principle of statutory construction that each statute is to be construed as a whole, and all provisions thereof are to be considered and must be construed strictly in favor of an accused, we must consider the import of the phrase "make all reasonable efforts." Since it is impossible to make any reasonable effort to clear the highway without knowledge that a substance has been dropped, the implication is strong that the legislature did not intend to impose strict liability and penalize persons, who, unknowingly dropping a substance on the highway, have failed to remove the same.

In answer to your question as to whether persons who violate Section 304.160 are to be punished in accordance with Section 304.570, we should examine the history of the two sections.

Section 304.160 was formerly subsection (j) of Section 8401, Missouri Revised Statutes, 1939, section heading 'Miscellaneous Offenses', and was punishable by subsection (d) of Section 8404, Missouri Revised Statutes, 1939. Subsection (j) of Section 8401 was repealed by the 1949 revision, and re-enacted as Section 304.160. Subsection (d) of Section 8404 was also repealed and re-enacted as Section 304.570, to continue the general penalty clause in this chapter, even though other parts of Section 8404 were removed.

CONCLUSION

It is, therefore, the opinion of this office that:

(1) A person accidentally dropping a substance proscribed

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by Section 304.160, RSMo 1949, cannot be held criminally liable for failure to make all reasonable efforts to clear such substance or article from the highway, unless he has knowledge that the substance has been dropped.

(2) Penalty for violation of Section 304.160, RSMo 1949, is prescribed by Section 304.570, RSMo 1949.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

PMcG:lrt