

MOTOR VEHICLES:
ABANDONMENT:

In order to constitute abandonment of property, the owner must voluntarily abandon with no intention of retaking.

January 27, 1956



Honorable Paul Knudsen
Prosecuting Attorney
Caldwell County
Hamilton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"At the present time, the Sheriff of Caldwell County, Missouri, has in his custody three automobiles. One of the automobiles was left here by a man who was picked up by the Highway Patrol and held for Kansas authorities. This man was extradited and we have not heard from him since. The car has been in Caldwell County approximately three months now.

"The second car is a car that was abandoned in Braymer, Missouri, and from the information that we can receive, the owner, who was a section hand on the railroad, has left the state and cannot now be found.

"The third automobile is a 1951 Lincoln automobile that was used in the commission of three burglaries in Polo, Missouri, and the subjects performing the burglaries were surprised in the act. One was apprehended but the owner of the automobile escaped, and, although we have warrants issued for him, he has not been apprehended to date. There has been no claim laid on this car by anyone; however, the license plate and the bill of sale, which was in the glove compartment of the car, were issued to a Robert Mathis who has an extensive police record, and evidently has left the state in an effort to avoid prosecution on this matter.

"All three of these cars have been in our custody over a period of more than three months' time. What, if any, is the proper procedure to get rid of said automobiles and is it possible for us to advertise and sell same turning the money into the county? If such is possible, what is the proper procedure for us to take to obtain title to same so that we may get rid of these automobiles and get them off our hands?"

Honorable Paul Knudsen

We believe that the only approach to this matter, whereby the county could obtain legal right to the motor vehicles mentioned by you above, is upon the theory of abandonment.

The most recent (1952) statement as to what constitutes an abandonment is found in the case of *Linscomb v. Goodyear Tire and Rubber Co.*, 199 Fed. (2d) 431. In its opinion in that case the court stated (1.c. 435):

"We have recently had occasion to consider the Missouri law on the issue of abandonment. *Equitable Life A. S. v. Mercantile-Commerce Bank & Trust Co.*, 8 Cir., 155 F.2d 776; *Rosenbloom v. New York Life Ins. Co.*, 8 Cir., 163 F. 2d 1; *Motlow v. Southern Holding & Securities Corp.*, 8 Cir., 95 F. 2d 721. In *Equitable Life A. S. v. Mercantile Commerce Bank and Trust Co.*, supra [155 F. 2d 780], we said that the definition of Missouri courts was to the effect that abandonment 'is a fact made up of an intention to abandon, and the external act by which the intention is carried into effect.' In *Rosenbloom v. New York Life Ins. Co.*, supra [163 F. 2d 8], also determined under the laws of Missouri, we among other things said, 'For this court, Judge Johnson has recently stated the Missouri rule in *Equitable Life Assur. Soc. of United States v. Mercantile-Commerce Bank & Trust Co.*, 155 F. 2nd [776] 777, 779-780."

At 1. c. 436, the court further stated:

"A review of the Missouri decisions convinces that an abandonment involves a conscious purpose on the part of the owner of personal property to so treat it as to manifest an intention thereafter neither to use nor to retake it into his possession, and there can be no abandonment absent a composite fact, one element visible, the other sounding in intention, motive."

Similar statements of the law are to be found in the Missouri case of *Gale v. Nolan*, 137 SW2d 974, a 1940 case, and *Gerber v. Appel*, 164 SW2d 225, a 1942 case. All of this appears to come down to the fact that in order to have an abandonment the owner of a thing must intend to abandon it, must do so in fact, and must do so in a manner which indicates an intention not to retake or use it in the future.

Now, in the light of the above definition of "abandonment" let us apply the definition to the facts in the three situations set forth by you, in order to determine whether an abandonment has in fact occurred.

In the first situation you state that a man was in Hamilton, Missouri, in possession of a motor vehicle; that he was taken into

Honorable Paul Knudsen

custody by the highway patrol, and was subsequently extradited to the state of Kansas about three months ago, his motor vehicle remaining in Hamilton. It would seem clear that in this situation there has not been an abandonment within the terms of the above definition. This man, rightly or wrongly, was by force removed from possession of his motor vehicle and from the state of Missouri. There is no indication of an intention on his part to abandon the motor vehicle; no indication that he does not intend to retake it in the future, if he is at any future time physically able to do so. You do not know that the charge upon which he was extradited to Kansas will not be dismissed; or that if tried he will not be acquitted, and will then return to claim his motor vehicle; or that if tried and convicted, he will not, at the completion of his sentence, return to claim his motor vehicle. And at this point we will observe that we are unable to see that the fact that a person is suspected of or has participated in a crime has any bearing upon the matter of abandonment of property, except as is pointed out above.

Our conclusion, therefore, in the first instance, is that there has not been an abandonment and that nothing can be done toward disposing of this motor vehicle until there is substantial evidence of abandonment within the terms of the definition given above.

In the second situation, an itinerant worker left his motor vehicle in Braymer, Missouri, and is thought to have left the state, having been gone over three months. In the absence of any further facts we do not believe that this constitutes an abandonment. It is entirely possible that the owner intended to return for his property, but has been detained by accident, illness, or any one of numerous other reasons. There is no indication that he had no intention of returning for his property. Of course, other facts, not stated by you, could well enter into a construction of his intent. If the motor vehicle was old, of little value, in bad repair or wrecked, left in a public or semi-public place, the conclusion of abandonment would be stronger than if it was of substantial value and had been left in a private or semi-private place. But upon the basis of the facts given us, we do not believe that an abandonment has occurred.

In the third situation, the owner of the motor vehicle was surprised in the commission of a crime and fled, leaving his motor vehicle behind. We do not believe this constitutes an abandonment. Undoubtedly the owner left his motor vehicle behind, not because he had any intent to do so, but because he had to do so in order to avoid capture. Neither is there anything to indicate that if and when he gets clear with the law that he does not intend to return for his property. It would seem, in the light of the definition above, that abandonment must be voluntary and with no thought of repossession. These elements do not appear here.

Honorable Paul Knudsen

We note that Section 7, C.J.S., Vol. 1, p. 15, states that:

"An intention to abandon property, or a right, will not be presumed, at least where the conduct of the owner or holder can be explained consistently with an intention to hold or continue to claim the thing. It has even been said that the presumption is that one having property or a right did not intend to abandon it, but this is probably to be given no more weight than as a statement in different language of the general principle that abandonment will not be presumed; and, on the contrary, it has been held that, if the thing asserted to have been abandoned is shown to have been deemed by its owner, and by the general opinion of the community, valueless and merely a hindrance, the presumption that the owner intended to preserve it, or that he did not intend to abandon it, cannot arise, and that conduct on his part, inconsistent with an intention to continue to claim the property or right, may raise a presumption of abandonment, but these would seem to be inferences drawn from the facts, rather than presumptions, properly so called (Evidence § 115 [22 C.J. p. 83 notes 60-62]).

"So, the burden of proving an abandonment rests on one who asserts or relies on it, and it is incumbent on him to make it affirmatively appear that the property or right has been relinquished by its owner or holder, with the intention of abandoning it, and with no intention of returning to or reclaiming it."

We also call attention to Sections 8 and 9 et seq., which read, respectively:

"Sec. 8. The question of abandonment vel non, that is, whether there has been actual relinquishment of property or a right, and an intention to abandon it, is ordinarily a question of fact, to be determined by the jury under all the circumstances of the case, and not a question of law, although it has, somewhat loosely, been said to be a question of mixed law and fact.

"Where, however, there is, and can be, no dispute about the facts, that is to say, where all the essential facts are admitted or indisputably proved, and the inferences to be drawn from them are certain and free from doubt, and establish the fact of abandonment with reasonable certainty, the question may be

Withdrawn from the jury, and abandonment be declared by the court as a matter of law; or, on the other hand, where the evidence is, as a matter of law, insufficient to show abandonment, it seems that the court may likewise determine the question without submitting it to the consideration of the jury."

"Sec. 9. An abandonment of property or a right divests the title and ownership of the owner, as fully and completely as would a conveyance, from the time of the act of abandonment, and so, while the term 'loss' has a different connotation from 'abandonment', and is properly to be distinguished therefrom, an abandonment may be said to amount to the loss, in the more general sense of that word, of the abandoning owner's interest in, or title to, the property or right abandoned, so as to bar him from further claim to it, except as he, like anyone else, may thereafter appropriate it and make it his own if it has not already been appropriated by another. One who has abandoned property does not regain legal possession or ownership of it by mere vague utterances as to its probable future value and indefinite suggestions as to what he may do with it in time to come.

"Personalty, on being abandoned, ceases to be the property of any person, and thenceforth is noman's property, unless and until it is reduced to possession with intent to acquire title to, or ownership of, it. It may, accordingly, be appropriated by anyone, if it has not been reclaimed by the former owner, and ownership of it vests, by operation of law, in the person first lawfully appropriating it and reducing it to possession with intention to become its owner, provided, it has been said, the taking is fair. One so appropriating abandoned property, or any third person whom he may allow to take it, has a right to the property superior even to that of the former owner, and may hold it against him. In certain instances it has been held, probably as an application of these rules as to abandonment and appropriation, although this is not entirely clear, that personalty abandoned on the land of another became the property of the owner of such land."

Therefore, we do not believe that in any of the situations set forth by you there has been an abandonment within the definition, nor that until there has been, anything can be done toward disposing of these motor vehicles. If we are correct in our conclusions above, then it may be asked what facts and circumstances in each of the three cases cited by you would be necessary, in addition to the present facts, to constitute an abandonment.

Honorable Paul Knudsen

It would appear that continued absence of the owner would strengthen the theory of abandonment, and that the longer the absence the stronger the theory would become.

Incarceration of an owner for a long period of time and no effort on his part to reclaim his motor vehicle, would be evidence, as would the fact of the death of the owner without administration being had on his estate. Generally, on this point, subsection (b) of Section 7, C.J.S., Vol. 1, p. 15, states:

"The courts have held that, on a question of abandonment, as on one of fraud, a wide range should be allowed as to the evidence, both that tending to prove abandonment and that tending to rebut the allegation. Like any other fact, abandonment may be shown by circumstances, or it may be proved by the acts, conduct, or declarations of the abandoning owner."

From the above it appears that when property is truly abandoned that ownership of it vests in the first person appropriating it thereafter.

Since we have held that there has been no abandonment in this case, it is unnecessary for us to pass upon the other questions asked by you, since they are based upon the theory that abandonment has taken place.

CONCLUSION

It is the opinion of this department that in order to constitute abandonment of property the owner must voluntarily abandon, with no intention of retaking.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/ld