

CONSTRUCTION  
OF SECTION  
415.050  
RSMo 1949:

No criminal prosecution will lie against a person, company, or corporation for using the word "storage" in their advertisements even though such person, company, or corporation is not engaged in the storage business and is not licensed as a warehouse.



July 25, 1956

Honorable Austin F. Shute  
Assistant Prosecuting Attorney  
Jackson County  
415 East Twelfth Street  
Kansas City, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"On 6-20-56 I requested an opinion from your office concerning the Warehouseman's Act. In answer thereto your office very promptly forwarded to me an opinion rendered to Douglas W. Greene, prosecuting attorney of Springfield, Missouri, dated 2-20-53. This opinion does not answer my problem.

"We have in Jackson County a firm not engaged in the storage business but uses the word 'storage' in its business title. The firm is actually engaged in the sale of furniture. The use of the word 'storage' is admittedly merely a 'come on,' making potential customers think they are going to get a bargain on unreclaimed stored furniture.

"In reading the Act, as per my last letter, I am interpreting it as prohibiting the use of the word 'storage' without complying with the Act even though the firm is not actually in the storage business. The problem has also arisen, Section 415.040, which is the penalty section, is meant to apply to Section 415.050. I feel personally that it is."

All references to statutory sections will be to Revised Statutes Missouri 1949 unless otherwise indicated.

Section 415.050 reads as follows:

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"It shall be unlawful for any person, firm, partnership, association or corporation required by this law to be licensed to hold himself, themselves, or itself out as a public warehouseman or warehousemen, or advertise for, or solicit business as a warehouseman without first complying with the provisions of this chapter; or to use the word 'storage' in any way in connection with the business unless engaged in the storage business and licensed as a warehouse as provided by this chapter."

This section clearly prohibits the use of the word "storage" in connection with any business that is not (a) engaged in the storage business and (b) which is not licensed as a warehouse. Any business using the word "storage" which was not in harmony with (a) and (b) would be in violation of Section 415.050, supra.

The above is perfectly plain but the penalty applicable for such violation is not, we believe, so clear. Chapter 415 contains two penalty sections. One is 415.110 which clearly states it is applicable only to a violation of Sections 415.060 to 415.130. Since the section which we are concerned with is Section 415.050 it is plain that this penalty section does not apply.

The penalty section about which you inquire is 415.040 which reads as follows:

"Any person or persons who shall transact within a city now having or which shall hereafter have a population of twenty-five thousand inhabitants or more, the business of storing for compensation or consideration other property than grain, without first procuring a license and giving a bond or legal liability insurance policy as herein provided, who shall continue to transact such business after such license has been revoked, or such bond may have become void or found insufficient security for the penal sum in which it is executed by the court approving the same (save only that he may

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be permitted to deliver property previously stored in such warehouse), shall be guilty of a misdemeanor, and upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is carried on; and the court that issued may refuse to renew any license, or grant a new one, to any person whose license has been revoked, within one year from the time same was revoked."

It seems clear to us that this section does not apply to 415.050 because it states that it is applicable to those persons who shall transact within a city the business of storing for compensation property without first procuring a license to do so, or who shall transact such business after the license which they have procured has expired. Since you state that the businesses in question are not engaged in the storage business this section would not apply to them.

Our situation therefore is that there is no penalty in Chapter 415 which would apply to a violation of Section 415.050. Neither do we know of any general law which could be made applicable in this situation. Section 415.050 simply states that its violation shall be "unlawful" but it does not say whether such unlawfulness shall be a felony or a misdemeanor. In view of these facts we do not believe that any criminal prosecution will lie against a person, company, or corporation for using the word "storage" in their advertisements even though such person, company, or corporation is not engaged in the storage business and is not licensed as a warehouse.

#### CONCLUSION

It is the opinion of this department that no criminal prosecution will lie against a person, company, or corporation for using the word "storage" in their advertisements even though such person, company, or corporation is not engaged in the storage business and is not licensed as a warehouse.

The foregoing opinion, which I hereby approve, was prepared

Honorable Austin F. Shute

by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

HPW:lc