

MOTOR VEHICLES: Proposed information for violation of provisions of  
CRIMINAL LAW: Section 304.010, MoRS 1949, sufficient to fully apprise  
INFORMATIONS: the one charged of the offense committed.



June 7, 1956

Honorable Robert E. Wilson  
Prosecuting Attorney  
Bolivar, Missouri

Dear Mr. Wilson:

This will acknowledge receipt of your request for an opinion,  
the pertinent part of which reads:

\* \* \* \* \*

"I would like to have the opinion of your office on the sufficiency of an information charging the crime of careless and reckless driving in the following form, assuming that it contained all of the other necessary formal allegation: 'Did drive and operate a motor vehicle on, over, and along a public highway in said county and state in a careless, reckless and imprudent manner, by operating said vehicle at an excessive and unreasonably high rate of speed, so as to endanger the lives, limbs and property of persons of within said state and county, etc.'"

"I would like for you to consider this request particularly in the light of the language in the cases of the State vs. Ball, 171 Southwest second 787, and State vs. Reynolds, 274 Southwest second 514. Based on my own research, it seems to me that excessive speed in itself might be ground for a criminal charge of careless and reckless driving under certain circumstances even in the absence of a violation of any of the other rules of the road."

Section 304.010, MoRS 1949, requires that every person operating a motor vehicle on the highways of this state shall drive same in a careful and prudent manner and shall exercise the highest degree of care and at a rate of speed so as to not endanger the property of another or life or limb of any person. Said section reads:

Honorable Robert E. Wilson

"Every person operating a motor vehicle on the highways of this state shall drive the same in a careful and prudent manner, and shall exercise the highest degree of care, and at a rate of speed so as not to endanger the property of another or the life or limb of any person, provided that a rate of speed in excess of twenty-five miles an hour for a distance of one-half mile shall be considered as evidence, presumptive but not conclusive, of driving at a rate of speed which is not careful and prudent, but the burden of proof shall continue to be on the prosecution to show by competent evidence that at the time and place charged the operator was driving at a rate of speed which was not careful and prudent, considering the time of day, the amount of vehicular and pedestrian traffic, condition of the highway and the location with reference to intersecting highways, curves, residences or schools; provided, however, that no person shall operate a solid tire commercial motor vehicle having a rated live load capacity of two tons and less at a rate of speed exceeding twenty miles per hour, or a solid tire commercial motor vehicle having a rated live load capacity of more than two tons and not more than five tons at a rate of speed exceeding fifteen miles per hour, or a solid tire commercial motor vehicle having a rated live load capacity of more than five tons at a rate of speed exceeding ten miles per hour; and provided further, that no person shall operate a motor vehicle equipped with iron or other metal tires at a greater rate of speed than six miles per hour."

Section 304.570, MoRS 1949, further provides that any person violating any provisions of said chapter for which there is no specific punishment provided, upon conviction thereof, shall be punished by a fine of not less than \$5.00, nor more than \$500.00, or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment.

There being no specific punishment provided by statute for the violation of Section 304.010, supra, we are inclined to hold that Section 304.570, supra, is applicable, fixing the penalty upon conviction for violating any provision of said chapter (304) when there is no specific punishment provided therefor.

Honorable Robert E. Wilson

In State v. Ball, 171 S.W.(2d) 787, l.c. 792 and 793, the defendant was charged with operating a motor vehicle over the highways in a careless and reckless manner by violating one of the rules of the road in not keeping his motor vehicle as near to the right side of the highway as possible, etc. (see l.c. 789).

The defendant contended on appeal that said section 8383, under which the information was drawn similar to Section 304.010, supra, was not a penal statute but merely set out certain rules of the road which the operator should follow and upon failing to so follow he could only be guilty of negligence. The court in holding to the contrary, said, at l.c. 792 and 793:

"[13] Such charges of 'careless' and 'imprudent' operation of his car on the part of defendant, coupled with the allegation of the facts as to the manner of such careless and imprudent operation, charged conduct which was obviously contrary to and in violation of the statute, Section 8383, supra, and it constitutes a penal offense when considered in connection with the allegations of violation of Section 8385(b), supra. Punishment for said unlawful conduct is not provided for elsewhere in the laws governing motor vehicles, and, therefore, it comes within Section 8404(d), supra, which provides for punishment for violation of 'any of the other provisions of this article,' meaning, of course, Article I, which contains the sections, supra, under which defendant herein was prosecuted.

\* \* \* \* \*

"If we should adopt the view contended for by the defendant herein, drivers could with impunity operate motor vehicles on the highways at night without lights, and at all times without signal devices, thereby endangering the lives and property of others, as well as themselves, although driving without lights at night and driving without brakes are prohibited by Sections 8386 and 8387, RSMo 1939, MoRSA §§ 8386 and 8387. To put it mildly, we believe the Legislature did not intend any such result."

In State vs. Reynolds, 274 S.W.(2d) 514, the information therein was criticized as to the sufficiency of the information in that the

Honorable Robert E. Wilson

court failed to charge an offense. The defendant appealed from said conviction. Said information reads as follows at l.c. 514:

"The information charged: 'Douglas W. Greene, Prosecuting Attorney within and for the County of Greene, in the State of Missouri, informs the court that Clarence Edwards Reynolds, on the 24th day of February, A.D., 1953, at the said County of Greene, did then and there willfully, unlawfully drive and operate a motor vehicle, to-wit: a 1950 Buick Coach on the public highway of Greene County, Missouri, in a careless, reckless and imprudent manner so as to endanger the life, limb and property of others contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Missouri.'"

The court in passing upon the sufficiency of the information had this to say at l.c. 516:

"\* \* \* \* If the information had said that defendant operated his car in a careless and imprudent manner in that he was driving at a high rate of speed or was operating it on the wrong side of the road or that he was failing to keep it as near the right-hand side of the road as practicable or any of the other requirements of the statute, and by so doing, he endangered the property of another or the life or limb of any person, the information would have charged an offense under the law. As the information stands it merely pleads conclusions of law."

We believe that the information proposed by you in your request sufficient, as it appears to meet the requirements of the court set out in State v. Reynolds, supra, which were lacking in the information in that case. We can see no difference in violating a rule of the road as provided now in Sections 304.014 and 304.015, MoRS Cum. Supp. 1955, formerly Section 304.020, MoRS 1949, than violating the provision of Section 304.010, MoRS 1949. Both require persons operating motor vehicles over the highway shall drive in a certain manner and neither provides specifically for punishment for failure to so comply with the statute. However, in both instances there is a general punishment statute applicable to violations for which no punishment is provided by statute.

Honorable Robert E. Wilson

Furthermore, it might be considered good practice if you add immediately following, the words "unreasonably high rate of speed," words expressing the hazardous condition of the highway, such as the example referred to in your request, that the operator was driving over a road covered with ice, or mention the congested traffic at that particular time of day, or approaching a curve, etc.

We do not herein hold that the foregoing additions to the proposed information are absolutely essential to the validity of said proposed information but only that it will strengthen the validity of said information. The allegations in said proposed information clearly state in what manner or way the provisions of Section 304.010, supra, were violated. It contains a plain and concise statement of facts constituting the offense as provided by Supreme Court Rule 24. See State vs. Reynolds, supra.

#### CONCLUSION

Therefore, it is the opinion of this department that the proposed information contained in your request is sufficient to fully apprise the one charged of the offense committed, in violation of the provisions of Section 304.010, MoRS 1949.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

ARH:mw

John M. Dalton  
Attorney General