

CRIMINAL LAW: An information that accused crossed yellow line  
MOTOR VEHICLES: passing another vehicle in a no-passing zone does  
CARELESS DRIVING: not charge the commission of a crime.



January 23, 1957

Honorable Alden S. Lance  
Prosecuting Attorney  
Savannah, Missouri

Dear Sir:

This office is in receipt of your letter of recent date requesting an official opinion, which letter reads as follows:

"I request that your office render an official opinion to me concerning the question of law involving the manner of operation of motor vehicles in the State of Missouri as indicated by the following facts and circumstances. There has been considerable discussion in my county among the law enforcement officers and the Magistrate Judge as to whether or not a charge of careless and reckless operation of a motor vehicle would be adequately and legally stated by the allegation that 'the driver crossed a yellow line in an area designated as a no passing zone by the Missouri State Highway Commission.' These words would, of course, be preceded by the usual wording of a careless and reckless charge, a copy of which I am enclosing for your use in answering my question.

"Section 304.015 Missouri RS 1949 seems to cover the matter of the Highway Commission's authority to erect signs designating lanes of traffic under certain circumstances, and the same section seems to make it a violation of the traffic code to disobey the instructions given by such signs.

"We seem to have a lot of crossing of yellow lines on the two-lane highways for the purpose of passing other vehicles. Wherever possible, I make my charge read that the pass was made while approaching the crest of a grade or where the vision ahead was obstructed, as provided under Section 304.016

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Missouri RS 1949. Quite often we have areas where the yellow lines have been placed upon the highway by the State Highway Department upon curves which do not obstruct the view ahead. I have been wondering whether the simple charge of crossing the yellow line would be sufficient to sustain a careless and reckless driving conviction?

"I am enclosing a sample copy of the information which would be worded in the manner which has created the question in our minds."

In your letter you enclosed a printed copy of an information which omitting caption and verification reads:

" \_\_\_\_\_, Prosecuting Attorney, within and for \_\_\_\_\_ County, in the State of Missouri, upon information and belief, and upon his official oath, informs the Magistrate Court of \_\_\_\_\_ County, that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at and in said County of \_\_\_\_\_, & State of Missouri, the defendant \_\_\_\_\_, did then and there unlawfully and willfully drive and operate a motor vehicle, to-wit: \_\_\_\_\_, property of \_\_\_\_\_ upon a public road of the State of Missouri, known as U.S. Highway No. \_\_\_\_\_ in a careless and imprudent manner, without exercising the highest degree of care, so as to endanger the property, lives and limbs of others using said highway and road, by then and there carelessly and imprudently crossing a yellow line while passing another vehicle in an area designated as a no passing zone by the State Highway Commission."

In the case of State v. Reynolds, 274 S.W. 2d. 514, 1.c. 516, it was stated as follows:

"We do not agree with the State that merely stating the driver unlawfully operated his car in a careless and imprudent manner is good because it follows the wording of the statute. We have set out the rule followed

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by the courts in this state that it is sufficient to frame an information in the words of the statute where the statute describes the entire offense by setting out the facts constituting it. Certainly, the words used by the State in the information before us do not describe the offense charged as was held in State v. Ball, supra, cited by the State. 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."

Again, at l.c. 515, in the above case the court quoting from the case of State vs. Maher, 232 Mo. App. 998, 124 S.W. 2d. 679, 682, said:

"[2] '\* \* \* \* \* The indictment should state facts which constitute the offense with reasonable certainty so that the defendant may know what he is to answer. He should not have to guess at what he is to defend against or speculate as to the meaning of the allegations in the charge, and this is true in prosecutions for misdemeanors as well as for felonies. The averments should be so clear and distinct and set forth with such precision and fullness that there could be no difficulty in determining what evidence would be admissible under them, and so that the court and jury may know what they are to try, of what they are to acquit or convict the defendant, and so that the record may show, as far as may be, of what the defendant has been put in jeopardy. (Cases cited)."

It is thought that the authority to pass upon what constitutes a hill or curve has not been delegated by law so as to enable the

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employees of the Highway Department or the Highway Patrol to designate hills or curves, where passing a motor vehicle traveling in the same direction would be illegal, by the placement of yellow lines at such places. As the law now stands it is believed that an information cannot be drawn to describe any particular crime under the statutes by referring to yellow lines to sufficiently describe a criminal act. The principle of law deemed relevant here has been declared by our courts in the case of State v. Daugherty, 358 Mo. 734, 216 S.W. 2d. 467, where it is said at l.c. 741, (Mo. Reps.):

"Criminal statutes are to be construed strictly, liberally in favor of the defendant, and strictly against the state, both as to the charge and the proof. No one is to be made subject to such statutes by implication." State v. Bartley, 304 Mo. 58, 263 S.W. 95, 96; State v. Taylor, 345 Mo. 325, 133 S.W.(2d) 336, 341.\* \* \* \*"

In light of the preceding discussion it cannot be recommended that prosecution should be instituted by information citing accused with carelessly and imprudently crossing a yellow line while passing another vehicle in an area designated as a "no passing" zone by the State Highway Commission.

#### CONCLUSION

It is, therefore, the opinion of this office that an information declaring that a person crossed a yellow line while passing another vehicle in an area designated as a no passing zone by the Highway Commission does not sufficiently charge the commission of a crime.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. James W. Faris.

Yours very truly,

JWF:mw

John M. Dalton  
Attorney General