

CRIMINAL LAW:
PUBLIC SERVICE
COMMISSION:

A person convicted under Section 390.171, Missouri Revised statute, Cum. Sup., 1957 should be punished upon the basis of the statutory penalty set forth as punishment for the conviction of a misdemeanor in Section 556.270 RSMo 1949.

November 10, 1960

Mr. Ike Skelton, Jr.
Prosecuting Attorney
Lafayette County
Lexington, Missouri



Dear Sir:

Your recent request for an official opinion reads:

"Section 390.176 par. 1 R.S. Mo. 1957 Supplement states among other things, 'a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense'.

"The question has arisen as to whether the penalty referred to should or should not be construed as the minimum and maximum penalty to be assessed upon a plea of guilty or a finding of guilty in a prosecution under the preceding section 390.171 R. S. Mo. 157 Supplement or, should the statutory penalty for a misdemeanor apply to a fine of \$1.00 to \$1000.00 or one year in the county jail or both."

Section 390.171 Missouri Revised Cum. Sup. 1957 reads:

"Every owner, officer, agent or employee of any motor carrier, and every other person, who violates or fails to comply with or who procures, aids or abets in the violation of any provision of sections 390.011 to 390.176, or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement of the commission, or who procures, aids or abets any person in

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his failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation thereof shall be guilty of a misdemeanor."

Section 390.176 reads:

"1. Any person operating as a motor carrier who violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any person operating as a motor carrier is a separate and distinct offense, and in case of continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of sections 390.011 to 390.176 relating to penalties, the act, omission or failure of any officer, agent or employee of any person operating as a motor carrier acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such person."

This latter section, in our opinion, relates to a separate proceeding to recover the penalty therein provided, and not to criminal proceedings under §390.171, supra. That this is true is indicated by §390.156 which reads:

"An action to recover a penalty or a forfeiture under sections 390.011 to 390.176 or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.

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In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission, the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in sections 390.011 to 390.176, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order."

We therefore conclude that the penalties fixed by section 390.176 are those authorized to be collected by action instituted by the General Counsel to the Public Service Commission, under Section 390.156. They are separate from and unrelated to punishment which may be imposed for violations of Section 390.011 to 390.176 under criminal prosecution as misdemeanors.

Clearly Section 390.171 makes the offenses therein defined misdemeanors. Since no punishment otherwise is fixed, Section 556.270 RSMo 1949 would apply. That section reads:

"Punishment for misdemeanor in cases not fixed by law --. Whenever any offense is declared by statute to be a misdemeanor, and no punishment is prescribed by that or any other statute, the offender shall be punished by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment."

CONCLUSION

It is the opinion of this department that a person convicted under section 390.171, Missouri Revised Statutes, Cum. Sup. 1957, should be punished upon the basis of the statutory penalties set forth as punishment upon conviction of a misdemeanor, in section 556.270 RSMo 1949.

Mr. Ike Skelton, Jr.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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