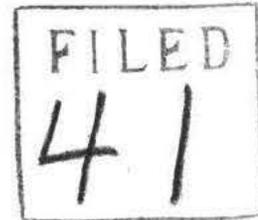


FELONY:
STEALING:
EMBEZZLEMENT:
LARCENY:
THEFT:
CRIMINAL LAW:

A series of independent thefts or embezzlements by an individual from one owner at different times which thefts or embezzlements, independently, do not equal the sum of at least \$50.00, can be pleaded in the aggregate in order to charge the individual with stealing in a sum of at least \$50.00 under Section 560.156 MRSA 1959, only in the event that the facts would show a single criminal purpose on the part of the thief or embezzler at the time of the thefts or embezzlements.

March 6, 1961



Honorable Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Mr. Hoff:

This is in response to your letter of January 11, 1961, wherein you requested an official opinion of this office concerning the following:

"I would like to have your opinion on the following:

In a prosecution under the present stealing statute in which the defendant is charged with stealing under circumstances which would have constituted embezzlement by agent under the old law; is it possible to charge the defendant with the aggregate amount embezzled over a period of time, where the agent was in the continuous receipt of monies? Or would each act of embezzlement have to be prosecuted separately, as in other cases of stealing?

Where the agent is in continuous receipt of monies and fails to account for same and converts the same to his own use, would it be possible to prosecute on a felony charge if none of the several acts of embezzlement amounted to \$50.00, although the aggregate sum would be many times that figure?

In the case of Tucker vs. Kaiser, 176 SW 2nd 622 and in other cases, the court stated in effect that the embezzlement of different sums at different times constituted a continuing offense

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and the aggregate amount could be charged in the information.

In the case of State vs Woolsey, 324 SW 2d 753, the court stated that the purpose of the new stealing statute is to eliminate the technical distinctions between offenses of larceny, embezzlement and obtaining money under false pretenses. '

If the 'technical distinctions' were eliminated and the charge was stealing only, each of the embezzlements would constitute a separate crime and no reference to other thefts of similar nature and in the same general pattern could be introduced in evidence."

Section 560.156 MRSA 1959 states:

2. "It shall be unlawful for any person to intentionally steal the property of another, either without his consent or by means of deceit."

Said section became effective in 1955 (Laws 1955, p. 507).

In determining the scope and effect of Section 560.156, the Missouri Supreme Court, in State v. Zammar, 305 SW 2d 441, 10c. cit. 445, quoted the language of a Florida court, which had a stealing statute similar to ours.

" 'The real purpose of the statute was to eliminate technical distinctions between the offenses of larceny, embezzlement and obtaining money under false pretenses.....' "

This position was reaffirmed by the court in State v. Woolsey, 324 SW 2d 753.

The question now arises whether separate thefts or embezzlements from one owner which independently would not equal the sum of at least \$50.00, but would so in the aggregate, can be pleaded in the aggregate in order to charge one under the felony Section 560.156 MRSA 1959.

In 52 C.J.S., Larceny, Section 53, the general rule is stated thereby:

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"Where several articles are stolen from the same owner at the same time and place, only a single crime is committed, and the taking of separate articles belonging to the same owner from different places in the same building, pursuant to a single criminal impulse, usually is held to constitute only a single larceny. Where the property is stolen from the same owner and from the same place by a series of acts, each taking being the result of a separate, independent impulse, each is a separate crime; but where the successive takings are all pursuant to a single, sustained, criminal impulse and in execution of a general fraudulent scheme, they together constitute a single larceny, regardless of the time which may elapse between each act."

State v. Stegall, 226 SW 2d 720, involved a situation where defendant was charged with another with stealing 5800 pounds of iron and steel scrap metal of the value of \$125.00 from a certain company. This metal taken by defendant and his accomplice consisted of three small truck loads, two taken one night and the one taken the next night. It was all taken to the accomplice's home and deposited in one pile; then all transported in one large truck load to St. Louis and sold. In its opinion, the Supreme Court stated:

"Under the evidence the taking constituted but one transaction, as the result of one intent, and it was not error to charge the entire transaction in one count as a single larceny."

Although, Section 560.156 MRSA 1959, eliminated the technical distinctions between the offenses of larceny, embezzlement and obtaining money under false pretenses, a series of thefts or embezzlements by defendant from the same owner at different times could be pleaded in the aggregate in order to obtain the jurisdictional amount of at least \$50.00 only in the event that the facts disclosed a single criminal purpose on the part of the thief or embezzler.

CONCLUSION

It is the opinion of this office that a series of independent thefts or embezzlements by an individual from

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one owner at different times which thefts or embezzlements, independently, do not equal the sum of at least \$50.00, can be pleaded in the aggregate in order to charge the individual with stealing in a sum of at least \$50.00 under Section 560.156 MRSA 1959, only in the event that the facts would show a single criminal purpose on the part of the thief or embezzler at the time of the thefts or embezzlements.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

GWD:vm