

November 23, 1965



Honorable Alden S. Lance
Prosecuting Attorney
Andrew County
415 West Main Street
Savannah, Missouri

Dear Mr. Lance:

You request an opinion concerning Section 43.170, RSMo 1959, which makes it a misdemeanor for the operator of a motor vehicle to refuse to stop or "obey any other reasonable signal or direction" of a member of the highway patrol "given in directing the movement of traffic on the highways."

The factual situation outlined is as follows:

"The individual under the wheel of this automobile started to drive onto the State Highway and the Patrolman stopped the car and directed the individual not to drive the vehicle on the public highway in his condition because if he did so he would be arrested for driving while intoxicated. The individual then backed the vehicle off of the State Highway right-of-way onto private property and parked it in apparent compliance with the Officer's direction. About 15 minutes later the Officer and another Highway Patrolman observed this vehicle being driven by the same individual down the public highway and he was arrested for driving while intoxicated and brought to the county jail, and he was given a summons to appear in Court for intoxicated driving, and failure to obey a reasonable direction of a member of the State Highway Patrol."

You want to know if the charge under Section 43.170 will stand.

Honorable Alden S. Lance

Section 43.170, RSMo 1959, provides in part as follows:

"It shall be the duty of the operator or driver of any vehicle or the rider of any animal traveling on the highways of this state to stop on signal of any member of the patrol and to obey any other reasonable signal or direction of such member of the patrol given in directing the movement of traffic on the highways. * * *"

The apparent and logical purpose of the law in question is to give the highway patrol reasonable latitude in unusual or emergency situations, not otherwise covered by law, to insure the safe and expedient flow of traffic over the highways and to provide for the punishment of those who refuse to cooperate to the detriment of the public at large.

The law should not be interpreted as establishing a means whereby the punishment for offenses already provided for may be enhanced or compounded.

The language of the statute conveys the definite impression that it is intended to vest in the patrolman control and management of traffic as immediate circumstances require. This leads to the clear inference that the act condemned is the failure or refusal of a driver to obey the "reasonable signal or direction" in the presence of the patrolman for some condition existing at that time.

Therefore, the situation which you outline does not come within the purview of this law because the patrolman's order was not made for the purpose of facilitating the flow of traffic over the highway but instead was made for the purpose of preventing the commission of a different offense which is punishable by another statute.

Moreover under the facts presented the disobedience of the order of the patrolman occurred subsequent to the order and apparently not in the presence of the patrolman. We conclude that the charge under Section 43.170 would not properly lie under the facts.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

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