

STEALING: Lessee of personal property is guilty of
LARCENY: stealing personal property where, with the
EMBEZZLEMENT: required specific intent, he fails to return
LEASED PROPERTY: the property at the time and place required
PERSONAL PROPERTY: by the lease.
CRIMINAL LAW:

February 25, 1966

OPINION NO. 61 (1966)
OPINION NO. 426 (1965)

Honorable Kenneth J. Rothman
State Representative
St. Louis County, 8th District
6815 Plymouth Avenue
University City 30, Missouri



Dear Representative Rothman:

This opinion is in answer to your inquiry about Section 560.156 (2) RSMo 1959, asking whether such section makes the action of an individual who has leased personal property; and thereafter, fails to return it at the time required in the contract, guilty of stealing contrary to Section 560.156, RSMo 1959.

Section 560.156, 1-(2) RSMo 1959, reads as follows:

"1. As used in sections 560.156 and 560.161, the following words shall mean:

* * * * *

"(2) 'Steal', to appropriate by exercising dominion over property in a manner inconsistent with the rights of the owner, either by taking, obtaining, using, transferring, concealing or retaining possession of his property."

Under the facts stated, the offense was known in earlier Missouri criminal law as embezzlement. State v. Roussin 189 S.W. 2d 983, 984-985; State v. Russell 265 S.W. 2d 379, 380.

In 1955, the offenses of larceny, obtaining property by false pretenses, and embezzlement were merged. The Missouri Supreme Court in State v. Zammar, 305 S.W. 2d 441, 443, has

this to say:

"* * * In 1955 the Legislature, by Senate Bill 27, repealed 59 separate sections of the statutes relating to offenses against property, and enacted in lieu thereof five new sections (now known as § 560.156 and § 560.161) relating to the same subject, and thereby consolidated, combined or merged larceny, embezzlement, obtaining money or property by false pretenses and other kindred offenses into one crime, denominated 'stealing'. Paragraphs (1) and (2) of subsection 1 of § 560.156 define the words 'property' and 'steal', as used in the act, as follows:

"(1) 'Property', everything of value whether real or personal, tangible or intangible, in possession or in action, and shall include but not be limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument and all things defined as property in sections 556.070, 556.080 and 556.090, RSMo 1949:

"(2) 'Steal', to appropriate by exercising dominion over property in a manner inconsistent with the rights of the owner, either by taking, obtaining, using, transferring, concealing or retaining possession of his property.* * *"

* * * * *

"With reference to the purpose of the new Florida statute, the Supreme Court of that state approved the following view of the trial judge in the case of Thomason v. American Fire & Casualty Company, 5 Fla. Supp. 129, which we find apposite to our own similar statute: 'The real purpose of the statute was to eliminate technical distinctions between the offenses of larceny, embezzlement and obtaining money under false pretenses. Prior to the enactment thereof in 1951 it was not uncommon for a criminal prosecution to become confused and sometimes result in a miscarriage of justice because of the fine line of demarcation between these offenses as they had previously been defined

Representative Rothman

by the legislature and the courts. The history of the times and of the particular legislation involved clearly indicates that the intent of the legislature was to eliminate this confusion and to simplify prosecutions involving the wrongful and criminal acquisition by one person of the property of another.' Anglin v. Mayo, Fla., 88 So. 2d 918, 922. See, also, State v. Pete, 206 La. 1078, 20 So. 2d 368, 372."

See also State v. Gale, 322 S.W. 2d 852.

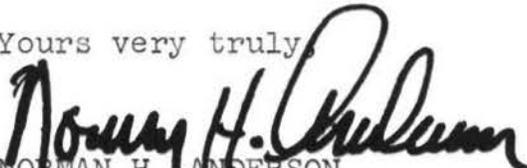
We conclude there is an offense which is proscribed by Section 560.156, RSMo 1959, and is called "stealing". It includes a person who leases or rents property but fails to return the property intending to "appropriate by exercising dominion over the property in a manner inconsistent with the rights of the owner." Proof of anything less than this would not constitute an offense under this statute. The underscored portion must also be established. Thus mere failure to return the property without this intent would not constitute an offense under the statute.

CONCLUSION

It is the opinion of this office that the offense of stealing under Section 560.156, RSMo 1959, is committed where a lessee of personal property, entertaining a specific intent to appropriate by exercising dominion over the property in a manner inconsistent with the rights of the owner, fails to return the personal property at the time and place required by the lease.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Richard C. Ashby.

Yours very truly,


NORMAN H. ANDERSON
Attorney General