CRIMINAL LAW:
RECKLESS OR NEGLIGENT:
OPERATION OF MOTOR BOAT:
A CRIME: WHEN:

If one is charged with operating motor boat in reckless or negligent manner so as to endanger life or property of any person, by permitting one to ride on bow, while boat is operated; no criminal violation of Section 306.110 (1) RSMo 1959, would be alleged. In addition to such allegations, other facts must be given, specifically showing how motor boat was operated in reckless and negligent manner within meaning of said section, to sufficiently charge defendant with violation of same.

OPINION NO. 461 (1966)
OPINION NO. 69

FILED
69

September 7, 1967

Honorable Paul Boone
Prosecuting Attorney
Ozark County
Gainesville, Missouri 65655

Dear Mr. Boone:

This office is in receipt of your request for a legal opinion, which reads in part as follows:

> "There has been reported to my office for prosecution the operator of a motor boat upon a lake in Ozark County, for operating the boat while another person was riding upon the bow of the boat; no other act of reckless or negligent operation of the boat is alleged.
>
> "Would the act of operating a motor boat while a person is riding on the bow of the boat constitute reckless or negligent operation of the boat under the provisions of Section 306.110 VAMS?"

Section 306.010 RSMo 1959, defines certain terms as used in the chapter, except in those instances where the context clearly indicates otherwise, among which are:

> "(1) Motor boat, any vessel propelled by machinery whether or not such machinery is a principal source of propulsion, but shall not include a vessel which has a

> valid marine document issued by the Bureau of Customs of the United States or any federal successor thereto and shall not include a vessel powered by machinery having a rating of ten horsepower or less.
>
> "(2) Operate, to navigate or otherwise use a motor boat or vessel.
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> * * * * * * * * *
>
> "(5) Waters of this state, any waters within the territorial limits of, this state that are navigable, except bodies of water owned by a person, corporation, association, partnership, municipality or other political subdivision, public water supply impoundments, and except drainage ditches constructed by a drainage district."

Although the opinion request does not specifically so state, that it refers to a "motor boat" operated, "upon waters of this state", within the meaning of said terms as defined by Section 306.010 supra, it is believed this was your intention and the opinion will be written on that basis.

Section 306.110 RSMo 1959, referred to in the opinion request, reads in part as follows:

> "1. No person shall operate any motor boat or vessel, or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life, or property of any person."

Section 306.210 (2) RSMo 1959, provides the penalty that shall be inflicted for a violation of Section 306.110 and reads:

> "2. Any person who violates any of the provisions of Section 306.110 shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not more than five hundred dollars, or by a term of imprisonment in the county jail of not more than six months or by both the fine and imprisonment for each violation."

Apparently your inquiry is concerned with the proposition as to whether or not a defendant can be (sufficiently) charged with a criminal offense, and a violation of Section 306.110 (1) supra, from the facts given in the opinion request. If he is alleged to have operated a motor boat upon certain waters of the State of Missouri, at a certain time and place, in a reckless or negligent manner, so as to endanger the life or property of another person, by allowing a person to ride as a passenger upon the bow of such motor boat at the time it was then and there being operated by the defendant, would this allegation be a sufficient description of an act constituting a crime within the meaning of Section 306.110 (1)? Such an allegation would be in the language of the section, but it would not necessarily be sufficient unless the section defined the crime of reckless or negligent operation of a motor boat, and the essential elements of such crime.

The general rule that a criminal charge framed in the language of the statute is sufficient, applies only where the statute describes the entire offense by setting out the facts constituting it, as held in State v. Maher, 124 S.W.2d 679.

The information in the case of State v. McNail, 389 S.W.2d 214, alleged careless and reckless driving, in violation of Section 304.010 (1), (5) RSMo 1959, and was attacked by the defendant, who contended it charged no criminal offense. The court found the information to be sufficient, but in passing upon defendant's contentions, said at l.c. 217-218:

> "Informations comparable to this one have been the subject of critical discussion * * *. This criticism is based upon the general rule of criminal pleading that an information charging a statutory crime may be couched in the language of the statute, if the statute itself sets forth the constituent elements of the offense; but if the statute merely defines the crime in generic terms, then the constituent facts must be pleaded in enough detail to advise the defendant specifically what he must defend against * * *. The offense of careless and imprudent driving is only very broadly defined by Section 304.010, par. 1, and an information charging that offense by reciting the bare language of the statute in negative form is generally held to be insufficient * * *. We have the view, however, that the rule requiring pleading of the constituent circumstances in the information, where the statute denounces the offense only

> in generic terms, may easily be overstated when dealing with traffic offenses * * *. The information first filed in the Circuit Court might easily have been more clearly and specifically drafted, but it does charge the defendant with having driven a specific automobile at a specific time and place in a careless and reckless manner by failing to drive to the right. The information does not merely allege the offense by reciting the bare words of the statute, but adds that the offense was committed by failing to keep on the proper side of the road or in the proper place* * *."

Again, in the case of State v. McCloud, 313 S.W.2d 177, it was held that general charges of wrongfully, wilfully and unlawfully driving an automobile in a careless, reckless and imprudent manner were mere conclusions of law and unless specific charges were stated with legal sufficiency, an information based on these charges would be insufficient.

As indicated above, if one were charged with operating a motor boat upon designated waters of Missouri, at a certain time and place, in "a reckless or negligent manner so as to endanger the life, or property of another", by allowing a person to ride as a passenger upon the bow of the motor boat at the time it was then and there being operated by the defendant, such an allegation, especially the quoted portion, would be in the language of Section 306.110 (1) supra, but no violation of the section would be alleged. Said section does not define, nor state what the essential elements of the crime of reckless or negligent operation of a motor boat shall consist of.

In view of the holdings in the above cited cases, such an allegation would be merely a conclusion of law. While the statutory language of Section 306.110 (1) may be used in the charge, such language in and of itself is insufficient to describe the offense, and for the reasons given in above cited cases, the charge must go further in describing the offense and state additional facts in clear and concise language, the specific acts and circumstances surrounding such acts, constituting the reckless and negligent operation of the motor boat. Allowing another to ride on the bow of a motor boat, without any further statement of facts, would not charge a violation of Section 306.110 (1), but if other facts were alleged, such as allowing one to ride on the bow of his motor boat thereby obstructing the view ahead, so that the operator could not get a clear view of the waters ahead to sufficiently steer his boat

in a proper manner, this would undoubtedly be reckless or negligent operation of the boat within the meaning of the statute. In view of the foregoing, our answer to the inquiry of the opinion request is in the negative.

CONCLUSION

Therefore, it is the opinion of this office that if one were charged with operating a motor boat in a reckless or negligent manner so as to endanger the life or property of any person, by permitting a person to ride as a passenger upon the bow of said boat, while it was being operated at a certain time and place, upon designated waters of the state, no criminal offense in violation of Section 306.110 (1) RSMo 1959, would be alleged. In addition to such allegation, other facts must be alleged specifically showing how the motor boat was operated in a reckless or negligent manner so as to endanger the life or property of another person, within the meaning of such terms as used in said statute, to properly charge the defendant with a violation of such statute.

The foregoing opinion which I hereby approve was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

NORMAN H. ANDERSON
Attorney General