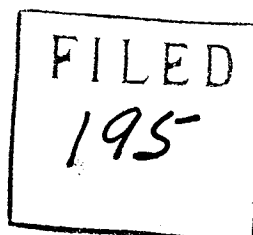


Answer by Letter - Danforth

April 28, 1971

LETTER OPINION NO. 195

Colonel E. I. Hockaday
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri



Dear Colonel Hockaday:

This opinion is in response to your letter asking this office to interpret Section 307.010 RSMo 1969. More specifically, you asked whether that Section may be violated before a load actually becomes dislodged and falls from a vehicle, and if so, what set of facts officers of the Highway Patrol should be prepared to testify to in order to prove a violation in court.

Section 307.010 RSMo 1969 provides:

"1. All motor vehicles, and every trailer and semitrailer operating upon the public highways of this state and carrying goods or material or farm products which may reasonably be expected to become dislodged and fall from the vehicle, trailer or semitrailer as a result of wind pressure or air pressure and/or by the movement of the vehicle, trailer or semitrailer shall have a protective cover or be sufficiently secured so that no portion of such goods or material can become dislodged and fall from the vehicle, trailer or semitrailer while being transported or carried.

"2. Operation of a motor vehicle, trailer or semitrailer in violation of this section shall be a misdemeanor, and any person convicted thereof shall be punished as provided by law."

It is clear on the face of the statute that the actual discharge of material from a motor vehicle, trailer or semitrailer is not a necessary element of a violation of the statute. What is necessary is a reasonable expectation that material may become discharged.

Colonel E. I. Hockaday

The statute in question provides that a violation occurs when the following facts are present: (i) the vehicle, trailer, or semi-trailer must be operating upon the public highways of this state. This means, that the vehicle in question must be in operation on a public highway. It does not constitute a violation if the vehicle is parked, or if it is operated on private property. See State v. Bartlett, 394 SW2d 434 (Springfield Ct.App. 1965); (ii) the vehicle must be carrying goods "which may reasonably be expected to become dislodged and fall from the vehicle" as a result of wind or air pressure or movement of the vehicle, and (iii) all or a part of the load must be susceptible to becoming dislodged by reason of the absence of a protective cover or other means of securing the load.

Whether or not the material being transported "may reasonably be expected to become dislodged" is a question of fact which must be determined on a case by case basis. Similarly, whether a protective cover is being used, or the load is sufficiently secured is a question of fact. There are no rules of law that can be firmly applied to resolve these questions.

We would suggest that a rule of reason be applied, and that the practical test should be whether an ordinarily prudent man would expect wind or air pressure, or vehicle movement to dislodge the material.

Very truly yours,

JOHN C. DANFORTH
Attorney General