MOTOR VEHICLES: Calculation of allowable weight per tire as provided under
CRIMINAL LAW: Sec. 304.180, Mo. RS. Cum. Supp. 1951. Lack of
PENALTY: criminal intent no defense for violation of foregoing statute under Sec. 304.240, Mo. RS. Cum. Supp. 1951.

JOHN M. DALTON
XXXXXXXXXX

FILED
1

April 29, 1953

XXXXXXX

Honorable A. R. Alexander
Judge of Probate Court
Clinton County
Plattsburg, Missouri

J. C. Johnsen

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"An emergency has arisen in this Magistrate Court in relation to the interpretation and application of Sec. 304.180, 304.190 and 304.240, as set out in Missouri Revised Statutes, Cumulative Supplement, 1951, at pages 312-313, under the following facts:

"The operator of a truck is summoned by a highway patrolman to appear on a day set to answer to a charge of overweight on an axle. The truck had double tires, or four tires on the axle. Under Section 304.180 should the calculation of allowable weight be made on the width of a single tire or on the double tire?

"Under Section 304.240, when the defense is that the load was lawful at the time of loading, but had slipped in the trailer to the axle complained of by reason of the road conditions, and that there was no criminal intent and therefore could be no conviction; is such defense available under this section?

"Because of the emergency suggested above we would appreciate an early opinion."

It is well established that when language of a statute is plain and unambiguous it may not be construed, but must be given effect as written. See St. Louis Amusement Company v. St. Louis County, 147 S.W. 2d. 667, 347 Mo. 456.

Also, that the primary rule of construction of statutes is to ascertain and give effect of lawmaker's intent, and this should be done from words used, if possible, considering the language honestly and faithfully. See City of St. Louis v. Senter Commission Company, 85 S.W. 2d. 21, 337 Mo. 238.

Section 304.180, Missouri Revised Statutes, Cumulative Supplement, 1951, reads in part:

> "304.180. * * *and no vehicle shall be moved or operated on the highways of this state having a load of over six hundred pounds per inch width of tire upon any wheel concentrated on the surface of the highway, the width in the case of rubber tires, both solid and pneumatic, to be measured between the flanges of the rim. * * *"

We are of the opinion that it was the intent of the General Assembly in enacting the foregoing statute that the calculation of allowable weight should be made on the width of each single tire. For example in this instance we have a truck with double tires on dual wheels, that is, there are four tires on a single axle instead of two single tires. Assuming that each of the four tires have 6" tire width concentrated on the highway, then the allowable weight would be 3600 pounds for each tire or 14,400 pounds for all four tires on said axle.

Your second inquiry is whether it is a valid defense under Section 304.240, Missouri Revised Statutes Cumulative Supplement, 1951, that there was no criminal intent shown. We are assuming that you are referring to a violation of the provisions of Section 304.180, supra. Said section merely provides that no vehicle shall operate upon the highways of this state under certain conditions specified in said statute, such as when the gross weight exceeds a certain amount or having a load in excess of six hundred pounds per inch in width of a tire upon any wheel concentrated on the surface of the highway. Nowhere in said statute does it specifically require that anyone shall have knowledge or criminal intent of such violation.

In view of this fact we are of the opinion that such constitutes an act which has been referred to as malum prohibitum, that is, it is a wrong only because made so by statute. See Hatch v. Hanson, 46 Mo. App. 323, l.c. 339.

In Section 30, page 85, Vol. 22, Corpus Juris Secundum, we find the following principle of the law:

> "By the express terms of a statute guilty knowledge is sometimes made an essential ingredient of the offense, as where it requires the act to be done 'knowingly,' etc. On the other hand, the legislature may forbid the doing of or the failure to do an act and make its commission or omission criminal without regard to the intent or knowledge of the doer, and if such legislative intention appears the courts must give it effect, and in such cases, the doing of the inhibited act constitutes the crime, and the moral turpitude or purity of the motive by which it was prompted, and knowledge or ignorance of its criminal character, are immaterial circumstances on the question of guilt; such legislation is enacted and is sustained, for the most part, on grounds of necessity, and is not violative of the federal constitution. * * *"

There are two classes of crimes under the law, malum prohibitum, which does not require criminal intent, and malum in se, which requires criminal intent be shown. In Duncan v. Commonwealth, 158 S.W. 2d. 396, 289 Ky. 231, the court in distinguishing the two classes said:

> "It would appear to be scarcely necessary to say that crimes are divided into two classes, i.e., malum prohibitum and malum in se, the offense here being one of the first class. In the text in 14 Am. Jur. 784, section 24, the distinction between the two classes of offenses is clearly pointed out, and it is stated that criminal intent is not a necessary element of offenses 'which are merely malum prohibitum, or of prohibitive statutes which cover misdemeanors in aid of the police power, where no provision is made as to intention.

> * * *In other words it is immaterial that the defendant acted in good faith or did not know that he was violating the law.'
>
> * * * * * *
>
> "That intent and knowledge are neither elements of strictly malum prohibitum offenses or misdemeanors, in the absence of an expressed legislative intent to the contrary, is also shown by the court's opinion in the case of People v. Sybisloo, 216 Mich. 1, 184 N.W. 410, 411, 19 A.L.R. 133. In that opinion cases from other states and jurisdictions are cited to the effect that 'An act malum prohibitum is not excused by ignorance, or a mistake of fact when a specific act is made by law indictable, irrespective of the defendant's motive or intent. * * * The general rule that the criminal intention is the essence of the crime does not apply to such prohibited acts.' This court in the later cases of Arnett v. Commonwealth, 261 Ky. 607, 88 S.W. 2d. 276, and Sowder v. Commonwealth, 261 Ky. 610, 88 S.W. 2d. 274, adopted the same interpretation."

See also People v. Johnson, 123 N.E. 543, 288 Ill. 442; Alex v. Richie, 53 S.E. 2d. 735, 740.

In view of the foregoing authorities we conclude that lack of criminal intent is no defense in this instance.

CONCLUSION

It is the opinionof this department that the part of Section 304.180, supra, requiring that no vehicle shall be moved or operated on the highways of this state having a load of over six hundred pounds per inch width of tire upon any wheel should be construed so that the calculation of allowable weight should be made on the width of each single tire on the axle and not of double tires, in case of a truck having double tires or four tires on an axle. Also, that criminal intent is no defense for violation of the provisions of Section 304.180, supra, under the penalty provided in Section

Hon. A. R. Alexander

304.240, supra, since the act in question is one of malum prohibitum, and that said statute does not specifically require one to have criminal intent before being subject to prosecution thereunder.

This opinion, which I hereby approve was written by my assistant, Mr. Aubrey R. Hammett, Jr..

Yours very truly,

JOHN M. DALTON
Attorney General

ARH:lrt