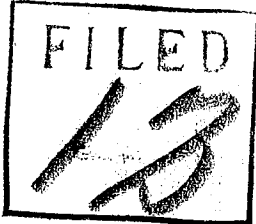


MOTOR VEHICLES:
CRIMES AND PUNISHMENT:
FORGERY:
FALSE AFFIDAVIT:

False application for certificate of ownership to a motor vehicle a forgery, when. False application also false affidavit under Section 557.090, 1949. Taking of false acknowledgment by notary violation of Section 561.220, Laws, 1952, page 420.



November 8, 1954

Honorable David G. Bryan
Supervisor, Motor Vehicle Registration
Department of Revenue
Jefferson City, Missouri

Dear Mr. Bryan:

In regard to your original opinion request dated December 8, 1953, and your subsequent letter in regard thereto, this office is deleting question 1 and 1a of the original request and is answering paragraphs 2 to 4, inclusive.

Your opinion request No. 2 is as follows:

"Many cases have come to our attention where the lien holder has attempted to repossess vehicles by unorthodox methods which we believe are used to circumvent our requirement that the vehicle must be titled in the true purchaser's name and tax paid thereon, when applicable, before issuing title to the repossessor. The unorthodox methods referred to consist of the lien holder determining the last person we have record of who held title to the vehicle and applying for a duplicate title in that name, later assigning it to themselves or directly to another purchaser. We have in several of these cases caused investigations to be made by the State Highway patrol, the results of which reveal that the signatures on the applications for duplicate titles were forged by the person or firm attempting to repossess in the unorthodox manner.

"2a. It is our considered opinion that forgeries of this nature have been committed for gain, and therefore perpetrators of such forgeries could be prosecuted.

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"2b. May we respectfully request an opinion from your department as to whether such forgeries as described in paragraph 2 constitute fraud."

In regard to your question No. 2a as to whether such forgeries are committed for gain it is believed that Section 561.160 RSMo, 1949, is applicable, and reads as follows:

"Every person who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit any instrument or writing, being or purporting to be the act of another, by which any pecuniary demand or obligation shall be or purport to be transferred, created, increased, discharged or diminished, or by which any rights or property whatsoever shall be or purport to be transferred, conveyed, discharged, increased or in any manner affected, the falsely making, altering, forging or counterfeiting of which is not herein declared to be a forgery in some other degree, shall, on conviction, be adjudged guilty of forgery in the third degree."

It definitely appears in accordance with the facts as set out in your opinion request No. 2, that a right to property, i. e., a motor vehicle, is purported to be transferred from the last person who had a certificate of ownership on record with the Department of Revenue, to either a purchaser from the lien holder or to the lien holder. It is presumed here that lien holder means the holder of a chattel mortgage upon the motor vehicle there concerned.

It is noted that there has been no compliance with Section 301.190, paragraph (1) which requires a certificate of ownership to be issued before a motor vehicle may be registered. Section 301.440, Laws of Mo. 1949, provides for a penalty and makes such a violation a misdemeanor. In the case of Pearl Interests Securities Company, 357 Mo. 160, 206 S. W. 2d 975, wherein a used car dealer executed assignment without the name of the assignee filled in, or without the acknowledgment before a notary public at the time of the transaction, the court, at l. c. 978, said:

"Plaintiff did obtain the title certificates with assignments thereon signed by each owner at the time the cars described therein were delivered to him as sections 8382 required. However, plaintiff did not

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fully comply with the statute because he did not have the assignment of the certificates to him by the holders completed in the form prescribed by the Commissioner which included an acknowledgment before a notary. He had only an unacknowledged assignment, and this was not sufficient to vest the legal title in him. Although he was a notary he had no authority to take an acknowledgment on an assignment to himself as he said he intended to do. 1 Am. Jur. 334, 335, Secs. 52-53, 1. C.J.S. Acknowledgments Secs. 52-53. Nor would he or anyone else have had the right to fill in the name of Security, as assignee from the holders because he was the buyer and Section 8382 required the assignment to be made to him. To do so would be a misdemeanor. Sec. 8404(d), R.S. 1939, Mo. R.S.A. * * * *

Section 8404(d) is now Section 301.440, R. S. Mo. 1949, which makes a violation of Chapter 301 a misdemeanor.

In regard to the making of a false affidavit or certificate Section 557.070, RSMo. 1949, reads as follows:

"Every person who shall wilfully corruptly and falsely, before any officer authorized to administer oaths, under oath or affirmation, voluntarily make any false certificate, affidavit or statement of any nature, for any purpose, shall be deemed guilty of a misdemeanor, and shall upon conviction be punished by imprisonment in the county jail not less than six months, or by fine not less than five hundred dollars."

It is believed that your request in question No. 2a is for the purpose of determining just what criminal acts have transpired. It is believed that the above quoted Section makes it a misdemeanor to execute the affidavit necessary to obtain title. It seems that the perpetrators of the offenses outlined could be prosecuted under the above statute.

It appears that in accordance with the terms of Section 561.160, supra, the person who signed the name of the last owner of record to a spurious transfer could be found guilty of forgery

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in the third degree. The election as to the proper charge would have to be made by the Prosecuting Attorney in accordance with the facts he had before him.

In answer to your Question No. 2b, undoubtedly such action constitutes fraud but unless the Criminal Laws provide for punishment therefor it would be a matter of civil liability only. The fraud is punishable as elements of the statutory crimes set forth in other answers herein.

Your opinion request No. 3 is as follows:

"3. It is our feeling that anyone forging a signature for the purpose of obtaining a duplicate title to a motor vehicle should be subject to prosecution whether for gain or not.

"3a. May we respectfully request an opinion from your department as to whether prosecution is recommended on forgeries as described in paragraph 3, when it may not be possible to prove that forgery was for gain."

Unless the evidence shows that, to again quote from Section 561.160, supra, "Any rights or property whatsoever shall be purported to be transferred, conveyed, discharged, increased or in any manner effected," there should certainly be no attempt made to prosecute the alleged offender for forgery, because it is necessary to be shown that the alleged forgery was perpetrated for one of the purposes as described in the statute for a conviction to be upheld. However, as was said in answer to your question 2a the facts and circumstances in each individual case should determine the question as to just which of the various possible violations of the law have been committed.

Your opinion request No. 4 is as follows:

"4. When we have an application for duplicate title on which the alleged owner's name has been forged then we are bound to have a questionable jurat inasmuch as said applications are required to be notarized. For your information we are enclosing form MMV No. 22 'Application for Duplicate Certificate of Title.'"

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"4a. An opinion is respectfully requested from your department as to the seriousness and recommended procedure to be followed when a false jurat is indicated."

There is the following statement contained in the printed form for application of duplicate certificate of title:

"State of _____) ss. PERSONALLY APPEARED
County of _____) BEFORE ME, the under-
signed, this ____ day
of _____, 19__ the
above named

_____, who made oath in due form of law that the above statements are true.

Witness my hand and Official Seal

Notary
Public

My commission expires _____."

Section 561.220, Laws Mo. 1953, p. 421, makes it unlawful for any officer authorized by law to administer oaths or to affix his name to a false jurat. Section 561.220 is as follows:

"Section 561.220. Affixing false jurat-- penalty.-- 1. It shall be unlawful for any officer authorized by law to administer oaths to:

"(1) With or without his official seal to affix his name or permit another to affix his name to any jurat, certificate, attestation or any writing whatsoever whereby he attests or certifies, states or appears to state, that another person took or took and subscribed, a particular oath or made a particular affidavit, or swore to the truth of a particular statement, affidavit, application, certificate, writing, or pleading to be used or filed in any court or before any board, tribunal or officer of this or any other state, or of the United States, when no such oath was administered by him and taken in his presence.

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"(2) With or without his official seal to affix his name or permit another to affix his name to any jurat, affidavit, statement, certificate, application, writing or pleading described in subdivision (1) while wholly or partly in blank.

"2. Any person violating any of the provisions of this section shall be deemed guilty of a felony and upon conviction shall be punished by imprisonment in the penitentiary for not less than two years nor more than ten years or by imprisonment in the county jail for a term of not more than one year or by a fine of one thousand dollars or by both such fine and imprisonment.

"Approved May 2, 1953."

It is believed that the above section prescribes a penalty which covers the offense you describe in your question No. 4. Any notary public or other official who takes a false acknowledgment should be prosecuted and it is believed that this section is sufficiently broad to cover a set of facts such as you have stated in your request. The facts should be presented to the prosecuting attorney of the particular county in which the alleged violation occurred and we feel that it is incumbent upon the prosecuting attorney to select the particular crime in relation to the facts and file information or obtain an indictment against the offending party.

CONCLUSION

It is therefore the opinion of this office that the signing of the name of any previous owner to an application for a certificate of ownership by any person other than such previous owner constitutes forgery and such action is punishable under Section 561.160, RSMo 1949, as such. The same section is punishable as a misdemeanor under Section 557.070 for the making of a false affidavit. As to the offense to be charged against such violator the proper crime to be charged is a question for the prosecuting attorney and must be within his discretion. The attachment of a jurat by a notary public to a false affidavit known by him to be such is punishable as a graded felony under the provisions of Section 561.220, Laws Mo. 1953, p. 420.

Honorable David G. Bryan

The foregoing opinion, which I hereby approve, was prepared
by my assistant, Mr. James W. Paris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF:DA