

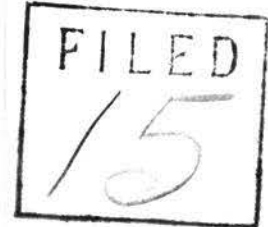
CRIMINAL LAW:  
MASTER AND SERVANT:  
MOTOR TRUCK LAW VIOLATIONS:

Owner of motor buses liable to punishment for violation of criminal laws by drivers when such act is done under the employer's command and within the scope of his employment and done for the employer by his knowledge and consent.

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January 6, 1938

Mr. E. M. Casteel,  
Superintendent and Colonel,  
Missouri State Highway Patrol,  
Jefferson City, Missouri.



Dear Sir:

This office acknowledges receipt of your request dated January 3, 1938, for an official opinion which is as follows:

"This Department from time to time is compelled to arrest various bus drivers throughout the State. The motor bus and truck law allows a bus to operate on the highways at a maximum speed of 40 miles per hour. In some instances the State Public Service Commission has issued permits and the bus companies have advertised in their schedules that they are operating over their routes at a speed as high as 39 miles per hour. In order for a bus operator to maintain this schedule it is necessary for him between stops to exceed the maximum speed allowed by the motor bus and truck law.

The policy of the Department has been to allow the bus drivers to exceed the speed of 40 miles an hour up to 50, unless in operating the bus, the driver does so in a reckless and careless manner.

Under the present procedure where arrests are made the summons is against the operator of the vehicle, and employers require the employee

to pay any fine assessed by the court, therefore the employer is not penalized and has no reason to decrease their speed requirements.

I will appreciate an opinion from your office as to whether or not we can also make the owner a party to arrests of this kind."

This request involves the question of the liability to punishment by the master for the criminal acts of the servant performed within the scope of authority of the servant.

Volume 16 Corpus Juris, page 123, Section 106, the rule is stated as follows:

"The civil doctrine that a principal is bound by the acts of his agent within the scope of the agent's authority has no application to criminal law. Therefore, the mere relation of principal and agent or of master and servant does not render the principal or master criminally liable for the acts of his agent or servant, although done in the course of his employment; it must be shown that they were directed or authorized by him. Moreover a clear case must be shown."

Sub-section A, note 21, paragraph 106, page 123 of Volume 16 Corpus Juris, the rule as to the liability of the master for the wrongful acts of the agent is stated as follows:

"A principal is liable for the violation of the criminal law by his agent only in three cases namely, first, where the

agent acts directly under the principal's command; second, where the agent, although without specific instructions, is acting at the time within the scope of his employment; and third, where the act is done for defendant (master) by his knowledge or consent."

In the case of State v. Lackman, 12 S.W. (2d) 424, 425, the court approved the following instructions given in said case on the question of parties jointly engaged in a criminal offense:

"All persons are equally guilty who act together with a common intent in the commission of a crime, and a crime so committed by two or more persons jointly is the act of all and each of them so acting.

'To make a person equally guilty with others who act together with a common intent in the commission of a crime, it is not necessary that all of the persons so acting together with a common intent in the commission of a crime be personally present at the commission thereof.

'If a person, tho not actually present when a crime is committed, before the commission thereof, advises, procures or encourages another person or persons to commit the same, then such person or persons who advise, procure or encourage the commission of such crime are equally guilty with the person or persons who actually commit such crime.

'Where, however, two or more persons enter into a conspiracy, agreement or common design to commit a felony, such as manufacturing moonshine whisky, then the act of one of them proceeding according to the

to the common plan, is in law the act of each, and each of them will be held responsible therefor in the law, as tho he himself had committed the physical act, and this, notwithstanding that he may have taken no part in the commission of the physical act himself."

In the case of Carleson v. State, 254 N.W. 744, 749, the court in discussing the same question, said:

"If one procures another to commit an offense, he may be prosecuted and punished as principal."

And in the case of State v. Parker, 24 S.W. (2d) 1023, 1026, in discussing the liability of the person who hired another to commit a crime, the court said:

"The proof did not show that the defendant broke into the Kroger store, but that he was accessory before the fact; that he hired other men to do the breaking in and to steal the sugar. Appellant complains that the defendant was not charged as an accessory but as a principal, and the proof did not sustain the charge. Section 3687, Revised Statutes 1919, provides that an accessory before the fact in the commission of a felony 'may be charged, tried, convicted and punished in the same manner, as the principal in the first degree.' This statute has been construed to cover just such cases as this. State v. Rennison, 306 Mo. loc. cit. 484, 267 S.W. 850; State v. Millsap, 310 Mo. loc. cit. 513, 514, 276 S.W. 625."

January 6, 1938

CONCLUSION

Following the foregoing authorities, this office is of the opinion if a servant, while operating a motor vehicle, violates the speed laws of the state, if such act is done directly under his employer's command, and although without specific instructions, he is acting at the time within the scope of his employment, and if the act is done for the employer by his knowledge and consent, then, all of these elements being present, the employer is equally liable for the violation of the law and subject to arrest and prosecution in the same manner that the servant is.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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