CRIMINAL LAW: (1) "Intent" not essential element in prosecution for violation of statutory crime mentioned (2) Magistrate in county having less than 70,000 inhabitants may assess penalty in excess of $500.00 under Section 304.240, RSMo 1953, Cumulative Supplement.

FILED
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March 27, 1954

Honorable J. R. Eiser
Prosecuting Attorney
Holt County
Oregon, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

> "We are finding some difficulty in trial of cases brought under the provisions of MoRS 1949, 304.180 to 304.240. Your opinion is requested in regard to the following matters, for future guidance:
>
> "1. Is the question of intent material to such cases? Following are principal defenses offered and often proved by substantial evidence:
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> > "a. Vehicle loaded by U.S. Government Ordinance Depot, and sealed. Load generally secret and driver ordered to proceed. Often there is a scale ticket showing vehicle was within limits when dispatched, but not always, and driver has no option about accepting load. Picked up as overloaded when he crosses Missouri scales.
> >
> > "b. Load dispatched and proven to be properly loaded and within weight

limits when dispatched. Due to adverse weather conditions, tractor and trailer pick up considerable in ice, snow or mud over the route, and arrested as being overloaded. In this case, every effort has been made to properly load the vehicle within legal limits. It is impossible to tell, often, upon dispatch how much or even if mud or ice the vehicle will pick up in transit, but in many cases this has been shown to run as high as a ton.

"c. Load dispatched and proven to be properly loaded and within weight limits when dispatched. Every precaution against load shifting shown to have been taken, but due to nature of cargo, load nonetheless shifts and results in scale showing axle overloaded.

"In each of the foregoing cases, it is clear that there was no intent to overload, but on the contrary, every precaution against overloading available has been taken. What is your opinion of the correct result in each instance and upon the general question?

"2. The jurisdictional limit of this magistrate court is $500.00. Has a magistrate, in assessing fines under 304.240, jurisdiction to assess a fine in excess of that limit, from the information, certify the case to the Circuit Court for trial?

"An early opinion would be appreciated."

Your first question as broken up into its three subdivisions relates to the necessity of charging and proving criminal "intent" in prosecutions for the crimes denounced by Sections 304.180 and 304.240, RSMo 1953, Cumulative Supplement. We will not set out at length these statutes verbatim but it will suffice to say that they are traffic regulation statutes designed to prevent overloading motor vehicle

carriers on the public highways. We do note in passing however, that neither statute incorporates the provisions that the act decried therein must be "knowingly" done to constitute an offense. We feel this to be pertinent for reasons which will appear infra.

The general rule with respect to crimes of the nature such as those denounced by the statutes mentioned is stated thus in 22 C.J.S., "Criminal Law", Paragraph 30, which reads in part, as follows:

> "The legislature may make an act criminal without regard to the intent or knowledge of the doer. Whether it has done so is to be determined from the language and purpose of the statute. Where the statute is silent, knowledge and criminal intent are generally essential if the crime involves moral turpitude, but not if it is malum prohibitum.
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> "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. * * *"

Our examination of the statutes involved in this opinion led us to the belief that prosecutions thereof fall within the general rule quoted as mentioned providing the elements of "knowledge" and "willfulness" are not embodied in the statutes. Neither are the acts described therein of the class of offenses described as being malum in se. Therefore we feel that the element of "intent" is neither necessarily to be charged nor proven in prosecutions brought under these statutes.

As supporting this view we direct your attention to State v. Granger, 199 S.W. (2d) 896, wherein it was said, l.c. 898:

> "The entire gist of appellant's complaint now is that the information did not allege that the act of exposure was intentionally and unlawfully committed. And true the information does not contain the word 'intentionally.' Neither is it required to. An intention to commit an act forbidden by law is to be inferred, except under a statute which makes the intent an essential part of the statutory charge, which is not the case here. 42 C.J.S. Indictments and Informations, Sec. 134, p. 1025."

We observe that the population of Holt County according to the last federal decennial census is less than 70,000 inhabitants, therefore we take it that the statute which creates some doubt in your mind as to the jurisdictional limit of your magistrate court in assessing fines exceeding $500.00 arises from the provisions of Section 482.090, RSMo 1949, of which Subsection 2 reads as follows:

> "2. Except as otherwise provided by law, magistrates shall have original jurisdiction of all civil actions and proceedings for the recovery of money, whether such action be founded upon contract or tort, or upon a bond or undertaking given in pursuance of law in any civil action or proceeding, or for a penalty or forfeiture given by any statute of this state, when the sum demanded, exclusive of interest and costs, does not exceed five hundred dollars in counties which now have or may hereafter have not more than seventy thousand inhabitants, seven hundred and fifty dollars in counties which now have or may hereafter have more than seventy thousand and less than one hundred thousand inhabitants, one thousand dollars in counties which now have or may hereafter have one hundred thousand or more inhabitants." (Emphasis ours.)

However, it is apparent that this statute relates to the recovery of judgments for money in civil proceedings and

is to be contradistinguished from criminal proceedings in which a penalty exceeding $500.00 may be imposed. To construe this statute otherwise would result in convicting the General Assembly of doing an absurd act, particularly when Section 543.010 is examined. This statute reads as follows:

> "Magistrates shall have concurrent original jurisdiction with the circuit court, co-extensive with their respective counties in all cases of misdemeanor, except in cities having courts exercising exclusive jurisdiction in criminal cases, or as otherwise provided by law."

Having conferred jurisdiction in misdemeanor cases upon magistrate courts the General Assembly has also passed Section 556.270, RSMo 1949, reading as follows:

> "Whenever any offense is declared by statute to be a misdemeanor, and no punishment is prescribed by that or any other statute, the offender shall be punished by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment." (Emphasis ours.)

It is apparent that it was within the contemplation of the General Assembly that in some criminal cases magistrates should have jurisdiction to assess monetary penalties in criminal proceedings in excess of $500.00.

For your further information we are enclosing a copy of an official opinion delivered by this office under date of April 29, 1953, to the Honorable A. R. Alexander, Judge of Probate, Clinton County, Missouri. This opinion is pertinent we feel to the first question you have proposed in your letter of inquiry.

CONCLUSION

In the premises we are of the opinion:

(1) That "criminal intent" need neither be charged nor proven in misdemeanor prosecutions brought under the pro-

Honorable J. R. Eiser

visions of Sections 304.180 and 304.240, RSMo 1953, Cumulative Supplement, and (2) That magistrates in counties having less than 700,000 inhabitants have jurisdiction to impose misdemeanor penalties in criminal proceedings in excess of the sum of $500.00 when authorized by law, particularly with respect to penalties assessed under Section 304.240, RSMo 1953, Cumulative Supplement.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB:vlw