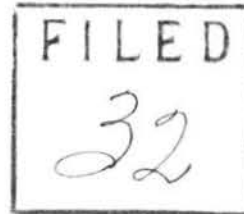


IN RE: MOTOR VEHICLE LAWS: RECONDITIONING SYSTEM OF THE
MOTOR COMPANY DOES VIOLATE.

7781 RS mo 1929

June 17, 1933

6-20



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Honorable Joseph A. Gerik
Chief of Police
Department of Police
1300 Clark Avenue
St. Louis, Missouri

Dear Sir:

This Department is in receipt of your letter of June 3, in which you request an opinion from this office on the following state of facts:

"It has just come to my attention that the Ford Motor Company, Detroit, Michigan, has instituted a new system with reference to reconditioning of motors manufactured by their company, which in my opinion will be a violation of the Motor Vehicle Laws of this State, as covered under Section 7781.

Ford dealers are now authorized to make an exchange of motors, replacing the motor taken from a machine with a reconditioned motor which is delivered the dealer from factory at Detroit. The motor number of this reconditioned motor is removed while it is at Detroit, and when delivered the local dealer it bears no number but will plainly show that the original or manufacturers number has been removed. The motor which is removed from machine and exchanged for this reconditioned motor is then crated and forwarded the Ford Company at Detroit, where it is overhauled, its number removed and then delivered to a dealer as a replacement, thus creating an endless chain of motors with the numbers removed." * * *

I would suggest that this department communicate with the Attorney General and the Secretary of State, Jefferson City, Missouri, giving this information asking for an opinion as to how to handle such cases as may come to our attention; whether or not the dealer will be authorized to restencil on the reconditioned motor the number of the motor for which it is exchanged, or whether the owner of the motor vehicle shall apply for a Commissioner of Motor Vehicle number, as provided in Section 7781, subsection (b) and (c).

Section 7781, R. S. No. 1939, insofar as it is pertinent to the present inquiry provides:

- "(a) No person shall destroy, remove, cover, alter, deface, or cause to be destroyed, removed, covered, altered or defaced, the manufacturer's number, the motor number or other distinguishing number on any motor vehicle, or number or other distinguishing number on any motor vehicle tire, the property of another for any reason whatsoever.
- "(b) No person shall sell, or offer for sale, or shall own or have the custody or possession of a motor vehicle, trailer or motor vehicle tire on which the original or manufacturer's number or other distinguishing number has been destroyed, removed, covered, altered or defaced, and no person shall sell, offer for sale, own or have the custody or possession of a motor vehicle or trailer, having no manufacturer's number or other original number, or distinguishing number;*****"

In the case of Star Square Auto Supply Company vs. Gerk, 30 S. W. (2d) 447, this statute was held constitutional in all its provisions.

In order to decide this case, the statute must be scrutinized closely and applied to the facts.

Subdivision (a) of Section 7781 R. S. No. 1929 provides:

"No person shall destroy, * * * * *
the manufacturer's number, the motor
number or other distinguishing number
on any motor vehicle," * * * "the property
of another for any reason whatsoever."

Under the facts as stated, subdivision (a) then is not applicable for the reason that the motor, when removed and sent to the factory at Detroit to be reconditioned, belongs to the Ford Motor Company; and, in removing the motor number, they are doing so with respect to their own property.

The remaining question then is the applicability of subdivision (b) of Section 7781, R. S. No. 1929, to the facts here under consideration. Subdivision (b) of Section 7781, so far as it is applicable may be divided into two parts:

(1) "No person shall sell, or offer for sale, or shall own or have the custody or possession of a motor vehicle, trailer or motor vehicle tire on which the original or manufacturer's number or other distinguishing number has been destroyed, removed, covered, altered or defaced,

and

(2) no person shall sell, offer for sale, own or have the custody or possession of a motor vehicle or trailer having gone manufacturer's number or other original number, or distinguishing number; * * * * "

There is no doubt but that our law on this subject has its historical basis in the law of the State of Illinois. The law of Illinois being Section 236, Chapter 121, R. S. Illinois 1929, in so far as it is pertinent provides:

"Any person or persons, firm or corporation, who, after the taking effect of this Act shall sell or offer for sale in this State, or who shall own or have the custody or possession of a motor vehicle, the original engine number of which has been destroyed,

removed, altered, covered, or defaced, or who shall sell or offer for sale, own or have the custody or possession of a motor vehicle having no engine number, excepting electrically propelled motor vehicles, shall be deemed guilty of a misdemeanor, * * * * * Provided, that any person, firm or corporation being the owner, or custodian of, or having possession of a motor vehicle, the original engine number of which has, without the knowledge or consent of such person, firm or corporation, been destroyed, removed, altered, or defaced, may apply to the Secretary of State, on a blank to be prepared and furnished by the Secretary of State, upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such motor vehicle a special engine number.* * * * *

In the case of *People v. Oberby*, 154 N. E. 128, plaintiff in error was convicted under this law. He defended on the ground that he had purchased a second hand engine block to put into the car; that the car when he purchased it had the number 9515119 stamped on the engine block; that the engine block became damaged beyond repair, and he removed it and destroyed it as required by law; and that he purchased from a dealer another engine block of the same make; that the block he so purchased bore no number although it was a second hand block and had evidently been used as part of a motor. He further testified that upon installation of this engine block in his car he stamped thereon the number 9515119 as such number had appeared on the original engine block in the car. The court in holding that he had violated the motor vehicle law said:

" * * * The outstanding fact in this case is that the engine block which plaintiff in error says he substituted for the one which he took out and thereby made it a part of his automobile bore evidence that the original number thereon had been defaced. His possession of it in his car is undenied, and section 35 has therefore been violated. He would have no more right to put the number of another car on a block which appeared to be blank than he had to erase the number. The intention of the statute is to prohibit

substituted numbers on engine blocks, as these are matters of identification of automobiles. The finding of the municipal court in this case that plaintiff in error violated that act is justified by the provisions of section 35 of the act. The judgment will be affirmed. Judgment affirmed."

The only real difference between the Illinois law and the Missouri law is that the Illinois law expressly says "a motor vehicle the original engine number of which has been destroyed," while the Missouri law contains the words "motor vehicle" alone. However, without a motor there cannot be a motor vehicle. The motor is an indispensable and integral part of the motor vehicle so that when the term "motor vehicle" is used it must of necessity include the motor. This is recognized in the case of *People v. Oberby supra*, when the court said: "The outstanding fact in this case is that the engine block which plaintiff in error says he substituted for the one which he took out and thereby made it a part of his automobile" " " The general assembly of Missouri also recognized this fact when it defined a motor vehicle as being "any self propelled vehicle not operated exclusively upon tracks, except farm tractors." In the case of *Star Square Auto Supply Company v. Gerk*, 30 S. W. (2d) 453, the Supreme Court of Missouri, in holding the automobile tires to be an integral part of a motor vehicle said: "In other words the tires are as essential to the operative use of the vehicle as is the motor or gasoline engine which propels it."

The Missouri Law was enacted in the exercise of the police power in the interest of public welfare. It was designed not only to protect those citizens who might be the owners of automobiles and thereby have property subject to theft but was also designed in the interest of the public at large to the end that the commission of crime and the escape of criminals in stolen automobiles might be suppressed.

Therefore, in view of the foregoing, it is our opinion that the buying or selling of a reconditioned motor, the original engine number of which has been removed, is a violation of Section 7781 R. S. Mo. 1929; nor is it possible for the owner of the motor vehicle to apply to the commissioner of motor vehicle for a new engine number as suggested in the letter addressed to this department for the reason that that provision of the statute relating to the issuance of new engine numbers is expressly limited

by the legislature to the following case:

" * * * Provided, however, that any person being the owner or custodian of, or having possession of a motor vehicle, trailer or motor vehicle tire at the time of taking effect of this article, the original number of which has been previously destroyed, removed, covered, altered or defaced, shall, within thirty (30) days after the taking effect of this article, apply to the commissioner on a blank to be prepared and furnished by said commissioner, for permission to make or stamp, or cause to be made or stamped on such motor vehicle, trailer or motor vehicle tire, a special number: " * * * "

We are aware that the enforcement of this law may result in some inconvenience to certain individuals and a possible economic loss to the Ford Motor Car Company in that it of necessity prevents the sale by that corporation of reconditioned motors for model "A" Fords. Nevertheless, these facts cannot render a law invalid or justify this department in nullifying the law. As was said by the court in the case of Star Square Auto Supply Company v. Gerk, in construing the very law now here before us:

"However, the mere fact that the enforcement of a law, enacted by the legislature in pursuance of the police power of the state, may result in some expense or inconvenience to those persons who come within its terms does not render such a law unconstitutional and invalid, or justify the courts in nullifying the law. The propriety, wisdom and expediency of legislation enacted in pursuance of the police power is exclusively a matter for the legislature." * * * "

Therefore it is the opinion of this department that the new system inaugurated by the Ford Motor Car Company with reference to the reconditioning of motors conflicts with Section 7781 R. S. No 1929, under the heading of "The Motor Vehicle Law."

Respectfully submitted,

JOHN W. HOFFMAN, JR.,
Assistant Attorney General.

APPROVED _____
JWH:MM Attorney General