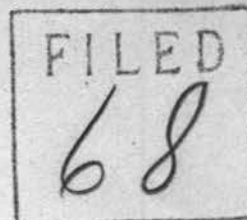


AUTOMOBILES: Registered dealers in automobiles required to maintain record prescribed by subparagraph (b) of Sec. 8381, R.S. Mo. 1939.



March 25, 1949

H-19

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Colonel Jeremiah O'Connell
Chief of Police
Department of Police
1200 Clark Avenue
St. Louis (3) Missouri

Dear Sir:

Your recent request for an opinion from this office is quoted herewith, together with excerpts from the supplementary report which was attached to the request, such excerpts being necessary to a full statement of facts in this case.

"Attached are self-explanatory reports by Sergeant Richard Jerabek, of our Automobile Theft Squad, concerning the arrest of one William Charles Weber, an automobile dealer, on charge of 'failing to maintain a record.'

"Application for warrant against Weber was instituted under Section 8381, Paragraph B, and Mr. Jasper Vettori, Assistant Prosecuting Attorney, City of St. Louis refused to issue a warrant for the reasons set out in attached report.

"For our information, it is requested that you give us an opinion as to the legality of Mr. Vettori's interpretations and conclusions in this matter."

DEPARTMENT OF POLICE
CITY OF ST. LOUIS
Supplementary Report:

"1. In the reports describing the arrest of William Charles Weber, 48 years, born in Missouri, married, merchant (automobile dealer), operator of the Weber Auto Sales, 3347 South Kingshighway Boulevard, it is indicated that subject operated under Missouri Automobile Dealer's Registration

#D-1348 and has applied for 1949 Dealer's Registration. It is also indicated that upon initial application for warrant, the facts were presented to Mr. Jasper Vettori, Assistant Prosecuting Attorney, who advised that the warrant would be taken under advisement and that this date the warrant was refused due to the lack of sufficient evidence.

"2. Application for warrant was instituted under Section #8381, Paragraph "B", Missouri Motor Vehicle Laws, * * * * *

"3. In the descriptive report of the circumstances culminating in the arrest of subject Weber, it is indicated that a certain motor vehicle was purchased by Weber, who in turn disposed of that vehicle and failed to record the acquisition and disposal of instant motor vehicle. Prior to his arrest, Weber had refused to acknowledge the purchase of instant vehicle or divulge the identity of the individual to whom he had delivered that vehicle. After the subject's arrest he was interrogated at this office and he then disclosed the identity of the seller and purchaser of instant vehicle, reporting that no record had been made of the purchase or sale, due to both transactions being on a cash basis.

* * * * *

"5. Mr. Vettori reported that it is his conclusion that the described section would be applicable to a registered automobile dealer, ONLY, when that registered dealer accepted a motor vehicle or trailer for the purpose of re-sale for some individual, the dealer at no time acquiring actual ownership of that vehicle, but merely acting as an agent. Should the dealer acquire actual ownership of the vehicle, the described section is not applicable.

* * * * *

It becomes necessary for the purpose of this opinion to make a concise statement of the question to be determined. The fact situation as presented poses the following query: Do the provisions of subparagraph (b) of section 8381, R.S. Mo., 1939, require a registered dealer in automobiles to maintain the records described therein when the dealer acquires actual ownership of the vehicle?

The conclusion to be reached in this case will rest on a construction of language contained in section 8381, R.S. Mo., 1939, and the statute is now quoted in its entirety:

Section 8381.

"(a) Every dealer shall make a monthly report to the commissioner, on blanks to be prescribed by the commissioner, giving the following information: Date of the sale of each motor vehicle sold; date of delivery of same; the name and address of the buyer; the name of the manufacturer; motor number; style of vehicle, motive power; horsepower; and it shall also state whether the motor vehicle is new or second-hand and the rated live load capacity of commercial motor vehicles.

"(b) Every dealer and every person operating a public garage shall keep for inspection of proper officers, a correct record of the registration, number, motor number, manufacturer's name, of all motor vehicles or trailers accepted by him for the purpose of sale, rental, storage, repair or repainting, together with the name and address of the persons delivering such motor vehicle or trailer to the dealer or public garage keeper, and the person delivering such motor vehicle or trailer shall record such information in a book kept for that purpose by the dealer or garage keeper.

"(c) The alteration or obliteration of the motor number on any such motor vehicle shall be prima facie evidence of larceny and the dealer or person operating such public garage shall upon his discovery of such obliteration or alteration immediately notify the sheriff, marshal,

constable or chief of police of the municipality wherein the dealer or garage keeper has his place of business, and shall hold such motor vehicle or trailer for a period of forty-eight hours for the purpose of an investigation by the officer so notified."

No court decision has been found in this state construing the section above quoted. The construction to be placed on the statute must be based on a reading of the language used, coupled with known objectives and purposes of the law of which this particular section is a part. On numerous occasions our Appellate Courts have made reference to the purposes and objectives of the Motor Vehicle Act of Missouri. The section under consideration has remained unchanged since its appearance in Missouri Laws of 1921, Extra Session, p. 87. Before directing attention to the specific language used in section 8381, supra, we quote from the case of *Howell v. Connecticut Fire Insurance Company*, 257 S.W. 178, l.c. 181, decided by the Springfield Court of Appeals in 1923:

"The law was passed as a general welfare safeguard to prevent the trafficking in stolen cars and, in order to prevent that evil which had become prevalent, the Legislature saw fit to require that parties dealing in motor cars comply with said regulations."

The above case has been cited approvingly in *State ex rel. Connecticut Fire Insurance Company v. Cox*, 306 Mo., 537, 268 S.W. 87; and in *Pearl v. Interstate Securities Co.*, 198 S.W. (2nd) 867.

A reading of section 8381, R.S. Mo. 1939, supra, and particularly subsection (b) thereof discloses no ambiguity on its face. It has been suggested (See quoted excerpts from Supplementary Report) that the provisions contained in this subsection (b) would be applicable to a registered automobile dealer only when that registered dealer accepted a motor vehicle or trailer

for the purpose of re-sale for some individual, the dealer at no time acquiring actual ownership of that vehicle, but merely acting as agent, and that if the dealer should acquire actual ownership of the vehicle the described subsection would not be applicable. To adopt such a suggestion would be, in our opinion an attempt to implement the statute by writing into it an exception which has not been placed therein by the lawmaking body. Such an interpretation would violate accepted rules of statutory construction.

In the case at hand we have a registered dealer admittedly not keeping a record which is required by law to be maintained. Failure to maintain the record could in all probability lead to a mischief which the law has intended to prevent. The gravamen of the offense is in the failure to maintain the prescribed record. Courts will so construe a statute as to suppress a mischief, advance the remedy and suppress subtle inventions and evasions for the continuation of the mischief, and will add force and life to the enactment according to the true intendment of the makers of the act for the good of the public. Decker v. Deimer, 229 Mo., 296 S. W. 936; Vining v. Probst 186 S.W. (2nd) 661.

CONCLUSION.

It is the opinion of this department that the provisions of subparagraph (b) of section 8381, R.S. Mo. 1939, are to be complied with by a registered dealer in automobiles even though the dealer should acquire title in himself to the automobiles.

Respectfully submitted,

APPROVED:

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Assistant Attorney General

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Attorney General

JLO'M:p