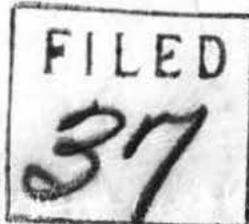


CRIMINAL LAW:  
MOTOR VEHICLE:

Owner subject to penalty of misdemeanor for operating motor vehicle not properly licensed where driven by an agent or employee.

February 20, 1952



3-7-52

Honorable David E. Harrison  
Superintendent  
Missouri State Highway Patrol  
Jefferson City, Missouri

Dear Sir:

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

"It frequently comes to the attention of the department that a motor vehicle owner may fail to renew the motor vehicle license when it is due, but that the vehicle may be operated by an individual in the employ of the owner. It has been our policy in the past to arrest the driver of the vehicle, although he is not directly responsible for the failure to renew the license at the proper time.

"One of the prosecuting attorneys of our counties located in the southwest requested that we obtain from your office an opinion as to whether or not there is any section of the motor vehicle statutes under which the owner of the vehicle might be fined upon for failure to re-register."

Subsection 5 of Section 301.130, RSMo 1949, provides in part as follows:

"Before being operated on any highway of this state every motor vehicle or

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trailer shall have displayed the permanent license plates or temporary permit issued by the director of revenue entirely unobscured, unobstructed, all parts thereof plainly visible and kept reasonably clean, and so fastened as not to swing. \* \* \*

Section 301.440, RSMo 1949, provides as follows:

"Any person who violates any provision of this chapter for which no specific punishment is provided, shall upon conviction thereof be punished by a fine of not less than five dollars or more than five hundred dollars or by imprisonment in the county jail for a term not exceeding two years, or by both such fine and imprisonment."

Since no specific punishment has been provided for violation of Subsection 5 of Section 301.130, the provisions of Section 301.440 would be applicable where a motor vehicle is operated on the highways of this state without displaying the permanent license plates or temporary permit issued by the director of revenue.

Although under the facts you have presented, an agent or employee is actually operating the motor vehicle, we are of the opinion that the owner as employer is likewise subject to the provisions of Section 301.440, are liable for the unlawful act of his agent or employee. It is generally stated that a principal or master is not liable for the criminal acts of his agent or servant since the requisite intent cannot be imputed to the principal or master; however, the rule is otherwise where an act is absolutely forbidden and the intent is not a necessary element of the crime. The latter rule is stated in 22 C.J.S., Criminal Law, Section 84, as follows:

"Moreover, under statutes positively forbidding certain acts irrespective of the motive or intent of the actor, a principal or master may be criminally liable for his agent's or employer's act done within the scope of his employment, \* \* \*."

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The rule is stated in Wharton's Criminal Law, 12 Ed. Section 286, page 374, thusly:

"When the agent performs the illegal act under an absent principal's direction, whether express or implied, this imposes responsibility on the principal. In misdemeanors the act may be charged to have been done by the principal himself, without reference to an agent."

In the case of Richardson v. United States, 104 C.C.A., 69, the court in passing upon a similar question said:

"Where an act is done by the procurement of a person it is his act in effect, even where it is made a crime. It is true that, in case of a felony, in order to be answerable as principal, the person must have been actually or constructively present where another, equally guilty, commits the deed. But the offense here is a misdemeanor, in which all parties are principals, and there is no occasion therefore to refine the distinction between aiders and abetors, or principals in the first or second degree."

We must assume from the request as stated that the person actually operated the motor vehicle is acting at the request of the owner and within the scope of his employment. If such be the case, we are of the opinion that under the foregoing cited cases and authorities, that the owner of the motor vehicle may be charged under the provisions of Section 301.130 and 301.440, RSMo 1949, for operating on the highways of this state, a motor vehicle not properly licensed. The owner could not himself actually operate the vehicle nor could he employ an agent to operate it for him and escape the penalty of law.

#### CONCLUSION

Therefore, it is the opinion of this department that the owner of a motor vehicle not properly licensed and operated by an agent or employee at the direction or request of the owner, is subject

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to the provisions of Section 301.440, RSMo 1949, and liable as a principal for violating Section 301.130, RSMo 1949.

Respectfully submitted,

D. D. GUFFEY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
ATTORNEY GENERAL

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