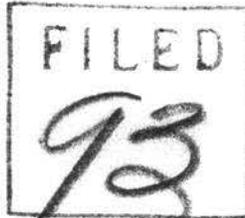


TRAFFIC REGULATIONS: Penalties are provided in Section 304.570,
RSMo 1949, for violations of the terms of
PENALTIES: Section 304.250 of Chapter 304, RSMo 1949.



March 5, 1953

Honorable Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Superintendent Waggoner:

This will be the opinion requested by letter by former Superintendent of the Missouri State Highway Patrol, Honorable David E. Harrison for the construction by this office of the terms of Section 304.250 of the general provisions relating to traffic regulations contained in Chapter 304, RSMo 1949, to determine if said chapter prescribes a penalty for the violation of the provisions of said section. The letter states:

"Recently one of our officers arrested an operator of a tractor and charged him with violating section 304.250, Revised Statutes Missouri 1949, which pertains to the use of metal tired vehicles on the highways. This case was dismissed by the magistrate as he maintained that there was no penalty for this, except that in sub-section 3 the statutes provide that the person shall be liable for the amount of damage caused to the highway, etc.

"We would like to inquire if there is a provision for a penalty in addition to the liability mentioned in sub-section 3. Of course, if the penalty does not apply to this section, in the future we will be unable to make an arrest but merely supply the name of the violator to the proper authorities. We ask that you give us an opinion on this question at your earliest convenience."

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Said Section 304.250 reads as follows:

"1. No metal tired vehicle shall be operated over any of the improved highways of this state, except over highways constructed of gravel or clay bound gravel, if such vehicle has on the periphery of any of the road wheels any lug, flange, cleat, ridge, bolt or any projection of metal or wood which projects radially beyond the tread or traffic surface of the tire, unless the highway is protected by putting down solid planks or other suitable material, or by attachments to the wheels so as to prevent such vehicles from damaging the highway, except that this prohibition shall not apply to tractors or traction engines equipped with what is known as caterpillar treads, when such caterpillar does not contain any projection of any kind likely to injure the surface of the road. Tractors, traction engines and similar vehicles may be operated which have upon their road wheels 'V' shaped, diagonal or other cleats arranged in such manner as to be continuously in contact with the road surface if the gross weight on the wheels per inch of width of such cleats or road surface, when measured in the direction of the axle of the vehicle, does not exceed eight hundred pounds.

"2. No tractor, tractor engine, or other metal tired vehicle weighing more than four tons, including the weight of the vehicle and its load, shall drive onto, upon or over the edge of any improved highway without protecting such edge by putting down solid planks or other suitable material to prevent such vehicle from breaking off the edges of the pavement.

"3. Any person violating this section, whether operating under a permit or not, or who shall willfully or negligently damage a highway, shall be liable for the amount of such damage caused to any highway, bridge, culvert or sewer, and any vehicle causing such damage shall be subject

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to a lien for the full amount of such damage, which lien shall not be superior to any duly recorded or filed chattel mortgage or other lien previously attached to such vehicle; the amount of such damage may be recovered in any action in any court of competent jurisdiction, in the name of the state, by the municipality, county or other civil subdivision or interested party."

The letter requesting the opinion states that recently there was an arrest by the Highway Patrol of an operator of a tractor charged with violating said section, and that the case was dismissed by the Magistrate in whose Court the case was pending on the ground that there is no penalty prescribed in the statutes for the violation of the terms of said section. The particular inquiry is, whether there is a penalty provided in the statutes, in addition to the civil liability prescribed in subsection 3 of said Section 304.250 for the violation of said section, which would authorize the arrest and prosecution, and punishment, as for a criminal offense, of any person violating the terms of said Section 304.250.

Section 304.570, RSMo 1949, prescribing a penalty for the violation of any of the provisions of said Chapter 304, reads as follows:

"Any person who violates any of the provisions of this chapter for which no specific punishment is provided, upon conviction thereof, shall be punished by a fine of not less than five dollars nor 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."

Said Section 304.570 was in the Revised Statutes of Missouri, 1939, Section 8404. The St. Louis Court of Appeals in the case of State vs. Ball, 171 S.W. (2d) 787, construed the terms of said Section 8404, to determine if the penalties prescribed in said Section 8404 applied to violations of the terms of said Section 8401, although none of the separate paragraphs dealing with various offenses set forth in said Section 8401 provided for a penalty. The Court of Appeals held that the penalties prescribed in said Section 8404, R.S. Mo. 1939, did apply to any violation

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of any of the provisions of said Section 8401. In the Court's decision, l.c. 791, the Court in its discussion of the statute, said:

"An examination of Section 8401 shows that there are twelve separate paragraphs dealing with various offenses which are set forth therein. However, none of said paragraphs provides for a penalty. Penalties for many specific offenses are provided for in Section 8404, supra, as we have shown above. The last mentioned section contains nine separate paragraphs providing penalties for various offenses, some of which are by imprisonment in the penitentiary, while others provide for imprisonment in the county jail or by fine, or by both such fine and imprisonment. Some paragraphs in Section 8404 provide for penalties other than fine or imprisonment, such as revocation of certificate of registration of automobiles.

"The penalty assessed in the case at bar comes within subdivision (d) of Section 8404, supra, the applicable part of which provides: 'Any person who violates any of the other provisions of this article shall, upon conviction thereof, be punished by a fine * * *.' (Emphasis ours.)"

The information in the case of State vs. Ball, supra, charged that the defendant had operated a motor vehicle on the highways of this State in a careless, reckless and imprudent manner. In holding that the information charged an offense against the defendant for violation of the provisions of Section 8401, R.S. Mo. 1939, and that the penalties prescribed in said Section 8404 applied thereto, the Court, l.c. 792, further said:

"The general rule as to statutory construction has been stated as follows: 'The intent is the vital part, the essence of the law, and the primary rule

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of construction is to ascertain and give effect to that intent. * * * Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the Legislature and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the Legislature.' Sutherland on Statutory Construction, 2d Ed., Vol. 2 § 363.

"Having in mind the above rules of construction, we find ourselves unable to agree with the contention of defendant that the information fails to charge any offense under the statutes of the state because, as he argues, the Legislature intended the sections involved herein to be merely rules to apply only to cases involving negligence. Neither do we agree with defendant's view that Section 8404(d) under 'Penalties' was intended to apply only to acts and conduct designated in Section 8401, supra, as 'Miscellaneous Offenses.'"

The Court referred to Article I of the 1939 Revision as including the statutes construed, while here said Section 304.570 refers to Chapter 304 in prescribing the punishment for violation of the terms of said Section 304.250, a part of said Chapter 304. Holding that it was the clear intention of the Legislature to provide specifically in Section 8404, R.S. Mo. 1939, (now said Section 304.570, supra), for punishment of offenses prescribed and for other offenses throughout said Article I and to make such other offenses penal, l.c. 793, in concluding its opinion upholding the conviction of the defendant, the Court further said:

"We cite the Wahlers case as illustrative of the clear legislative purpose to provide specifically in Section 8404 for punishments for certain offenses and, also, in another part of the same section, to provide generally for punishment for other offenses scattered throughout Article I, thus showing the intention to make such other offenses penal.

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"It is clear that the Legislature intended by Section 304(d), supra, to provide punishment for violation of the rules which would otherwise have no penalty attached. The punishment provided extends from a fine of \$5 up to and including a fine of \$500 plus imprisonment in the county jail for two years, thus giving to the triers of the facts the widest latitude in 'making the punishment fit the crime,' and showing that the law makers recognized that some offenses punishable under said section might be of a minor character while others might be much more serious."

We believe the decision by the St. Louis Court of Appeals in the Ball case, supra, is definite and conclusive as the law of Missouri on this question and guides this office here in holding that the penalty prescribed in said Section 304.570 does cover violations of the provisions contained in Section 304.250, and that any person violating such terms of said section is liable to arrest, prosecution, and punishment therefor, as well as being civilly liable in damages as is set forth in said section.

CONCLUSION.

It is, therefore, the opinion of this office that penalties are provided in Section 304.570, RSMo 1949, for violations of the provisions of Section 304.250 of Chapter 304, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Yours very truly,

JOHN M. DALTON
Attorney General

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