

CONSTITUTIONALITY:

Sections 390.171 and 390.176, RSMo  
1949, are constitutional.



January 21, 1957

Honorable Harold W. Barriek  
Prosecuting Attorney  
Pettis County  
Sedalia, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"A matter has arisen in Pettis County, which raises some questions on which I would like an official opinion from your office. The facts are these:

"A summons was issued by a Trooper of the Missouri State Highway Patrol to the owner of a vehicle for failure to have the proper markings on his vehicle to comply with P.S.C. Rule No. 23, subsection b. The Trooper, acting under directions from Missouri State Highway Patrol headquarters filed the necessary information in my office for a prosecution of the defendant under Chapter 390, 1955 Supplement R.S. Missouri.

"I would like an opinion from your office of the following question:

"Does Section 390.131 contain constitutional authority for the P.S.C. to lay down rules of operation for P.S.C. licensees, the violation of which will subject the violator to criminal prosecution under Section 390.171 and 390.176. The question which comes immediately to my mind is whether or not such action is an unconstitutional delegation of the legislative power, which if allowed

Honorable Harold W. Barrick

would empower persons other than the legislature to designate what might constitute a criminal offense in the State of Missouri."

Your question is whether Sections 390.171 and 390.176, RSMo 1949, are constitutional.

We first note that Sections 390.171 and 390.176 are similar in that they both relate to rules and regulations laid down by the Public Service Commission. We further note that the subject matter covered by Section 390.171 is the same as that of Section 390.170 which was repealed by House Bill No. 183, Section 1, Laws of Missouri 1951.

We further note that in the case of State v. Dixon, 73 S.W. 2d 385, 1.c. 387, the Missouri Supreme Court held that the legislature did not delegate to the Public Service Commission any legislative authority. In this respect the court stated:

"This question alone remains. Did the Legislature have the authority to declare the violation of a rule of the commission to be a crime? It must be kept in mind that the states of our Union are sovereign states; that is, they have inherent power, and their Legislatures can pass any law which they may deem necessary for the welfare of the people and which is not prohibited by State or Federal Constitutions. In 51 C.J. p. 32, Sec. 7, we read: 'A constitutional provision authorizing the legislature to create a public utility commission is merely a declaration or recognition of the legislature's inherent authority, and not a grant or limitation of power, and so the rule of exclusion of things not ex-

Honorable Harold W. Barrick

pressed does not apply.'

"The Legislature in this case, and not the Public Service Commission, has declared that a violation of a safety rule promulgated by the Public Service Commission shall constitute a misdemeanor. The Legislature, not the Public Service Commission, has prescribed what penalty shall be imposed in case of a conviction of that offense.

"This identical question was before the Supreme Court of Massachusetts in the case of Brodbine v. Revere, 182 Mass. 598, 66 N.E. 607, 608. In that case a statute of the state created a park commission with authority to 'make rules and regulations for the government and use of the roadways or boulevards under its care.' The statute also made the violation of any such rules a misdemeanor. The contention was there made, as here, that the statute was unconstitutional as a delegation of legislative power. The court in denying this contention said in part: 'There is also strong ground for the contention that the quoted language of the statute simply leaves to the board the administration of details which the Legislature cannot well determine for itself, and which it may therefore leave to the determination of a subordinate tribunal, and that the substance of the legislation is found in that part of the statute which prescribes punishment for disregard of the regulations so determined.'

"Our statute is similar in that the

Honorable Harold W. Barrick

Public Service Commission was created as an administrative body with authority to regulate public utilities of this state as well as the transportation for hire of passengers and freight over the highways. It is an elaborate system covering the entire field of regulation. The Legislature, however, has kept to itself, and properly so, the power to prescribe what acts shall constitute a crime and what punishment may be assessed in case of a conviction. The Legislature has deemed it proper and necessary, in order to give force and effect to the orders, rules, and regulations promulgated by the commission, to say that a violation thereof shall be a misdemeanor.

"The Supreme Court of the United States has also spoken on this subject in the case of United States v. Grimaud, 220 U. S. 506, 31 S. Ct. 480, 483, 55 L.Ed. 563. In that case Congress had by an act established forest reservations. Their use for grazing and other lawful purposes to be subject to rules and regulations established by the Secretary of Agriculture. The violation of any such rules was made a crime. Grimaud was indicted for grazing sheep on a reservation in violation of a rule promulgated by the Secretary of Agriculture. A demurrer filed by the defendant was sustained. On appeal to the Supreme Court the ruling of the lower court was first affirmed by a divided court. The case was then restored to the docket, reargued, and the court, by a unanimous opinion, reversed the ruling of the lower court. The precise questions raised in the case at bar were there decided. It was held

Honorable Harold W. Barrick

that Congress had the power to authorize an administrative body to make certain rules and regulations; that in so doing Congress had not delegated any legislative authority. The court said in part:

\* "From the beginning of the government, various acts have been passed conferring upon executive officers power to make rules and regulations, - - not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power. But when Congress had legislated and indicated its will, it could give to those who were to act under such general provisions "power to fill up the details" by the establishment of administrative rules and regulations, the violation of which could be punished by fine or imprisonment fixed by Congress, or by penalties fixed by Congress, or measured by the injury done. \* \* \*

"That "Congress cannot delegate legislative power (to the President) is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution." Field v. Clark, 143 U.S. 649, 692, 12 S. Ct. 495, 36 L.Ed. 294, 309. But the authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense."

"So in the case at bar, the state legis-

Honorable Harold W. Barrick

lature did not delegate to the Public Service Commission any legislative authority; neither did the commission exercise such authority when it enacted certain safety rules to be observed by the operators of trucks and busses. It was the Legislature that enacted the law declaring the violations of these rules to be misdemeanors and prescribed the penalties to be inflicted. With these matters the Public Service Commission, under the law, had and has nothing to do. It follows that the trial court was in error when it sustained respondent's demurrer to the information."

CONCLUSION

It is the opinion of this department that Sections 390.171 and 390.176, RSMo 1949, are constitutional.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton  
Attorney General

HPW:lc