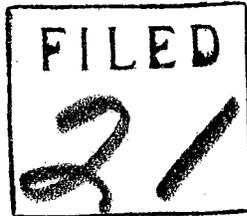


CRIMINAL LAW: (1) No criminal prosecution would lie for dumping rubbish along banks of stream on own property which washes down stream in high water; (2) Sec. 583.280, Mo. R.S., 1951 Supp., relating to compensation of clerks of courts of criminal jurisdiction, applies only in counties having population in excess of 500,000 or in cities of such population.

JOHN M. DALTON
XXXXXXXXXX



May 22, 1953

John C. Johnsen
XXXXXXXXXX

Honorable Bill Davenport
Prosecuting Attorney
Christian County
Ozark, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I have had an inquiry bringing up the following question: Is there any criminal or punitive action provided for in the State of Missouri against one who dumps trash such as bottles, cans, etc., in or near the bed of a small natural stream bed wherein flows a stream of water periodically but mostly at high water but which is fed above this point by a small wet-weather spring where such trash washes down the stream bed onto the lands of another. This dumping is presumably of trash other than and in addition to the ordinary household trash of the landowner but all actual dumping is strictly on the lands of the person dumping the trash. It is in times of high water that it washes down onto the complainant's lands.

"Also, the Circuit Clerk was just in my office and asked that I request a clarification of Section 483.280, R.S. 1949 and Laws 1951. The first few lines of this section are confusing to him in that it might indicate that the salary schedule of this section might refer to all counties of the State or might refer to counties and certain cities over 500000 population."

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As to your first inquiry, examination of the statutes reveals no offense described therein such as might be expressly included under the circumstances set forth in your letter.

Such disposal of trash might be held to constitute stream pollution. "It is an unreasonable use, resulting in liability for the pollution caused thereby, * * * to leave logs, fallen timber, waste matter, and debris alongside a stream so that flood waters will wash them down stream; * * *" 67 C. J., Waters, Section 125, page 775. However, Missouri statutes making stream pollution criminally punishable do not cover a situation such as this.

Section 252.210, RSMo 1949, makes punishable as a misdemeanor contamination of a stream sufficient to "injure, stupefy or kill fish," but that situation is apparently not present here, and therefore that section would not be applicable.

Section 564.080, RSMo 1949, provides:

"1. If any person or persons shall put any dead animal, carcass or part thereof, the offal or any other filth into any well, spring, brook, branch, creek, pond, or lake, every person so offending shall, on conviction thereof, be fined in any sum not less than ten nor more than one hundred dollars."

That section would not be applicable on the basis of the facts submitted by you.

We find no provision in Chapter 560, RSMo 1949, relating to offenses against property generally, which would cover this situation.

Stream pollution has been held punishable as a public nuisance. 67 C. J., Waters, Section 161, page 799. Section 564.080, RSMo 1949, prohibits the maintenance of a public nuisance. However, the pollution here involved would probably not come under this section. In the case of Smith v. Sedalia, 152 Mo. 283, the court, in discussing pollution as a public nuisance, stated at l.c. 301:

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"But it is a misconception to treat the case made in the petition as one of a public nuisance. Though there be several landowners through whose possessions the polluted stream may flow, and all suffer damage of the same character but each of different degree, that does not convert the injurious act into a public nuisance, for it is only those individuals and not the public in general who suffer; and therefore each may recover the damage he suffers though it differs only in degree from that that others in the same class suffer."

The circumstances outlined in your letter would not indicate any injury to the public generally.

We do not consider the question of liability in an action for damages, inasmuch as you would not be officially concerned with such question.

As for your second inquiry, Section 483.280, Mo. R.S., 1951 Supp., provides:

"1. In all counties and cities not within the limits of a county having a population of five hundred thousand inhabitants or more, or such as may hereafter have five hundred thousand inhabitants or more; the clerks of courts having criminal jurisdiction in such counties or cities shall receive an amount not exceeding six thousand dollars per annum for his salary and services as such clerk, said amount to be paid out of the treasury of such counties or cities in equal monthly installments on the first day of each month.

"2. In addition to other duties now provided by law for such clerk, he shall prepare and deliver to the judges of the court an annual report setting up the number of cases handled by the court, their disposition, their classification, the number of

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cases pending at the end of the year and such other information as the judges may require from time to time, and for such duties the clerk shall receive additional compensation in the amount of one thousand five hundred dollars per annum to be paid in the same manner as the compensation provided for in subsection 1.

"3. In all such counties or cities the clerk of such court shall have the right to select and appoint as many deputies, subject to the approval of the court, as may be necessary to perform the duties of his office, and shall fix the compensation of such deputies, not exceeding the sum of sixty thousand dollars in the aggregate which deputy hire shall be paid to such clerk, out of the treasury of such counties or cities in equal monthly installments on the first day of each month.

"4. On the last days of March, June, September and December of each year such clerk shall make out and file with the clerk of county court of such counties or with the auditor or comptroller of such cities a full and correct statement of all fees collected by him since his last report, and such clerk shall within fifteen days after filing said statement pay over to the treasurer of such counties or cities the amount of fees specified in such statement and take therefor duplicate receipts from the treasurer of such counties or cities and file one of such receipts with the clerk of the county court of such counties or with the auditor or comptroller of such cities and retain the other of such receipts in the office of such clerk."

(Emphasis ours.)

We are of the opinion that this section is applicable only to counties having a population of 500,000 inhabitants or more or in cities not within a county having such population. You

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will note the reference in the section, as above quoted, to "such counties." This clearly indicates, we feel, that the Legislature did not intend it to apply to all counties, but only such counties as have a population of 500,000 inhabitants or more. Paragraph 2 of this section was added at the last session of the General Assembly (Laws of Missouri, 1951, page 434). The title of the amendatory act read as follows:

"AN ACT to repeal section 483.280, RSMo 1949, relating to the duties and compensation of clerks and deputy clerks of courts having criminal jurisdiction in counties and cities not within the limits of a county having a population of over five hundred thousand inhabitants, and to enact in lieu thereof one new section, relating to the same subject, to be known as section 483.280."

This clearly shows that the provision added by the act was intended to apply only to the counties originally included therein, that is, counties having a population in excess of 500,000 inhabitants.

CONCLUSION

Therefore, it is the opinion of this office that there is no provision for criminal punishment of a person who dumps trash on his own land near the bed of a small stream which washes down stream in times of high water and comes to rest on other persons' land. This department is further of the opinion that Section 483.280, Mo. R.S., 1951 Supp., applies only to counties having a population in excess of 500,000 persons or cities not within a county having a population in excess of that figure.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW:ml