

Vagrancy: A man may be prosecuted under Section 563.340,  
Misdemeanor: 1959, relating to vagrancy, for his willful  
Nonsupport: neglect or refusal to support his family, even  
Criminal Law: though he is divorced at the time prosecution  
is initiated, if such willful neglect or  
refusal is alleged to have taken place prior  
to said divorce.

March 11, 1964

Honorable William H. Knox  
Assistant Prosecuting Attorney  
City of St. Louis  
Municipal Courts Building  
14th and Market Streets  
St. Louis, Missouri

OPINION NO. 96



Dear Mr. Knox:

This is in reply to your opinion request of February 10,  
1964, in which you ask:

"Please advise this office as to what effect, if any, a divorce would have on the clause which states, 'and every able bodied married man who shall neglect or refuse to provide for the support of his family.' Since the divorce the parties are not married anymore.

"Does the statute apply under these circumstances?"

Section 563.340, RSMo 1959, states in part as follows:

"\* \* \* every able-bodied married man who shall neglect or refuse to provide for the support of his family, \* \* \* shall be deemed a vagrant, and, upon conviction thereof, shall be punished by imprisonment in the county jail not less than twenty days, or by fine not less than twenty dollars, or by both such fine and imprisonment."

This is a criminal statute. Such statutes defining crimes are required to be construed liberally in favor of the defendant and strictly against the state. State v. Katz Drug Company, Mo., 352 S.W. 2d 678, 682 [3]. Furthermore, in the construction of a statute, the primary purpose

is to ascertain the legislative intent. That intent should be found, if possible, from the wording of such statute. A criminal statute does not include persons other than those which are clearly described in the statute. *State v. Hall*, Mo., 351 S.W. 2d 460, 463 [2,3].

The language used by the Legislature in that portion of Section 563.340, RSMo 1959, with which this opinion is concerned clearly designates that the Legislature intended to restrict its application to a man who was able bodied and married.

In *State v. Padberg*, Mo.App., 115 S.W. 2d 72, 74 [3], the St. Louis Court of Appeals declared that the provisions of this statute were leveled "against the able-bodied married man, who, having the ability to do so, either neglects or refuses to furnish the support mentioned. That is the vagabond husband; . . ." (emphasis ours).

Unquestionably a man who is divorced does not fall within the category of a husband, and, therefore, is not within the class of persons this statute is leveled against. The man's classification, however, is to be determined as of the time the willful neglect or refusal to support his family took place, and not as of the time prosecution therefor is initiated. *Hall v. State*, Ala., 14 So. 867.

#### CONCLUSION

A man may be prosecuted under Section 563.340, RSMo 1959, relating to vagrancy, for his willful neglect or refusal to support his family, even though he is divorced at the time prosecution is initiated, if such willful neglect or refusal is alleged to have taken place prior to said divorce.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,

  
THOMAS F. EAGLETON  
Attorney General