

MOTOR VEHICLES:  
CRIMINAL LAW:  
DRUNKEN DRIVING:

Section 564.440, RSMo 1969, does not require operation of a motor vehicle upon a public highway as a condition precedent to a charge of operating a motor vehicle while in an intoxicated condition.

September 4, 1970

OPINION NO. 470



Honorable George J. Pruneau  
Prosecuting Attorney  
Wayne County  
100 North Main Street  
Piedmont, Missouri 63957

Dear Mr. Pruneau:

This official opinion is issued in response to the request contained in your letter concerning the operation of a motor vehicle while intoxicated. Specifically, the question presented is as follows:

" \* \* \* In light of current constitutional concepts, does 564.440 require operation of a motor vehicle upon a public highway as a condition precedent to the charge of operating a motor vehicle while in an intoxicated condition?"

Section 564.440, RSMo 1969, provides as follows:

"No person shall operate a motor vehicle while in an intoxicated condition. Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor on conviction for the first two violations thereof, and a felony on conviction for the third and subsequent violations thereof, \* \* \* "

In *State v. Weston*, 202 S.W.2d 50, the Supreme Court of Missouri held that the statute prohibiting the offense of operating a motor vehicle while intoxicated does not require that the motor vehicle be operated upon a public highway. The court said, l.c. 53:

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"Instruction number one hypothesized a finding that the appellant operated a motor vehicle in Madison County while in an intoxicated condition but the instruction did not delimit the place of operation. But, whether the objection is to the instruction's failure to require a finding that the vehicle was driven upon a public highway or to its failure to precisely delimit the place it was driven in Madison County, there is no merit in the objection. The statute does not require that the motor vehicle must have been operated upon a public highway. \* \* \* "

The statute under which defendant was convicted was Section 8401(g), RSMo 1939, which now appears as Section 564.440, RSMo 1969.

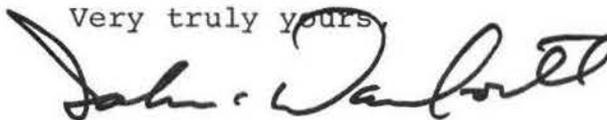
The same result has been reached by the court in State v. Davis, 143 S.W.2d 244; State v. Pike, 278 S.W.725; and State v. Hatcher, 259 S.W. 467.

CONCLUSION

Therefore, it is the opinion of this office that Section 564.440, RSMo 1969, does not require operation of a motor vehicle upon a public highway as a condition precedent to a charge of operating a motor vehicle while in an intoxicated condition.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH  
Attorney General