

MOTOR VEHICLES: Finder of numberless automobile tire has sufficient ownership to have a special number assigned by the Secretary of State.

January 22, 1942

Honorable G. R. Chamberlin  
Prosecuting Attorney  
Cass County  
Harrisonville, Missouri



Dear Sir:

We are in receipt of your letter of January 21st in which you request the opinion of this Department. Your request reads as follows:

"Recently our Sheriff took charge of three large truck tires.

"He got them from a man out in the country through an attempt on his part to sell them.

"The fellow he got them from declared that he found the tires near the road side, and that he did not have any idea where they came from. We therefore found ourselves without much to proceed on, for the reason that we were unable to locate the owner. The sheriff still holds the tires however, subject to the proper proof of the true owner, but on closer examination we find that the number on the casings have been buffed off or removed.

"What I would like to have your valued opinion on is as to what disposition

the sheriff may make of these tires. Section 8396 makes it misdemeanor under sub-head B, to offer for sale a tire where the distinguishing number has been removed. These tires are practically new and are claimed at a commercial value of \$150.00 for the three of them. Under the present conditions and the need of tires the use of these tires should be made available.

"Please give the benefit of your opinion in the manner by which the sheriff may dispose of them."

Section 8397, R. S. Mo. 1939, partially reads as follows:

"Whenever the original or manufacturers' number or other distinguishing number on any motor vehicle, trailer or motor vehicle tire has been destroyed, removed, covered, altered or defaced, the owner of such motor vehicle, trailer, or motor vehicle tire may apply to the Secretary of State, at Jefferson City, Missouri, for, and upon receipt of such application together with a fee of \$1.00 the Commissioner shall issue to said applicant, a certificate authorizing the owner to make or stamp or cause to be made or stamped on the motor vehicle, or motor or engine thereof or motor vehicle trailer or motor vehicle tire a special number to be designated by the Commissioner and when such number has been placed upon such motor vehicle or motor or engine thereof or trailer or motor vehicle tire such new number shall become and thereafter be the lawful number of the same, for the purpose of identification and registration and for all other purposes under the provisions of this article, and the owner

thereof may thereafter sell and transfer such property under said special number and no person shall destroy, remove, cover, alter or deface any such special number: Provided, that in connection with such application for such new number the owner of such motor vehicle, trailer or motor vehicle tire shall produce satisfactory evidence that he is the owner thereof."

Under the above partial section "the owner" is required to make the application. This question will be referred to later in this opinion.

Under this partial section the owner may obtain substitute serial numbers for the tire and after receiving the number assigned him by the Secretary of State as set out in Section 8396, R. S. Mo. 1939, he would not violate paragraph "b" of Section 8396, supra.

In your request you state that no conviction could be had upon the man who alleged he found the tires near the roadside, and by reason of that, Sections 4164, 4165 and 4168, R. S. Mo. 1939, are not applicable to the disposal of the property by the Sheriff for the reason that in each of the sections a conviction must be had before the property is disposed of.

Chapter 132, R. S. Mo. 1939, provides the procedure for the vesting of ownership in persons who find property. You infer in your request that the tires had been stolen and under the law of this State the stealing of property, which has been later found by an innocent person, is considered the same as if the owner had lost the property.

In the case of State v. Buzard, 144 S. W. (2d) 847, 1. c. 849, the Supreme Court of this State in defining "lost" said:

"In the case of Foster v. Fidelity Safe Deposit Company, 162 Mo. App.

165, 145 S. W. 139, 140, the plaintiff while in the business place of the defendant noticed an envelope lying on a desk in a private room maintained by the defendant for the use of its customers. The plaintiff examined the envelope, found therein \$180 in money. He delivered the money to one of defendant's offices. The defendant, although it made diligent effort to find the owner of the money, failed to do so. After a time the plaintiff brought suit claiming, 'if he should be successful in this action, he must institute certain proceedings prescribed by sections 8268-8273, R. S. 1909 (Mo. St. Ann. Secs. 14227-14232, pp. 5036, 5037), concerning lost property \* \* \*.' The court held the money was not lost in a legal sense; that for property to be 'lost,' as that term is used in the law, it must have been involuntarily parted with by the owner; that the situation of the property must clearly indicate it was lost and not voluntarily placed by the owner in the place where it was discovered."

It also said that the property is lost where it has been involuntarily parted with by the owner.

Also, the Supreme Court of the State of Iowa in the case of Flood v. City National Bank, 253 N. W. 509, 95 A. L. R. 1168, 1. c. 1173, construes the term "lost property" as follows:

"In practically all of the cases cited by appellee the court attempts to define and construe the term 'lost property.' In none of them, however, do the courts hold that property stolen under

the conditions disclosed by the evidence in this case would not constitute lost property.

"It is also contended by appellee that, because the money in question was intentionally hidden in a place known to the robbers it could not have been lost. The true rule, however, from an interpretation of all the cases, is that, in order to justify a holding that the property was not lost, it would have to be hidden or voluntarily left somewhere by the owner. The distinction between these cases and the case at bar is that it was not voluntarily hidden or misplaced by the owner. In the case at bar the owner knew absolutely nothing about the place where it was hidden. It was taken away from the owner involuntarily and hidden in the place where it was found without his knowledge or consent and against his will. This is not a case where the property was lost because of bad investments, or because it was squandered or given away, or because of gambling, waste, or bad loans. In all of such cases the money is voluntarily and intentionally parted with by the owner, and, though it might be said it was lost, the fact remains that, after it was gone, through the voluntary acts of the owner, it was no longer his property. He not only voluntarily parted with its possession, but its ownership as well. Money lost by theft is still the property of the owner. In the case at bar the money was parted with not only involuntarily, but taken away from the bank officers by duress, by fear, force and threats. It cannot be said that simply because the officers of the bank opened the vaults of the bank through fear, force, and

threats their acts became voluntary. In such a case the acts were involuntary and procured through duress. Money or property taken from the bank under such circumstances might be as effectually lost as though it was accidentally dropped in the sea. Without pursuing the subject further it is our conclusion that money lost by theft, and parted with by a bank in the manner in which the money in question was taken from the officers of the bank to a place unknown to the owners, is lost property under the provisions of section 12211 of the Code."

The Supreme Court of this State in the case of Hoagland v. Amusement Co., 170 Mo. 335, 1. c. 341, in holding that the finder has a special property in a chattel found, said:

"All of the authorities hold that the finder of a lost chattel is entitled to its possession as against all other persons except the true owner. The finder has a special property in the chattel found, sufficient to maintain trover against every person except the true owner. (2 Kent, star page 356 (Lacy's Ed. 1892, p. 453); Darlington on Personal Property, 35, 36, 37.) And generally the place in which it is found creates no exception to this rule. (Hamaker v. Blanchard, 90 Pa. St. 377.) In that case a domestic servant in a hotel found in the public parlor a roll of bank bills. She immediately informed the proprietor of the hotel, who suggested that the money belonged to a transient guest of the house and received it from the servant to hand to him. It was afterwards ascertained that the guest did not lose the money, and upon demand by the servant for the return of the money the proprietor refused to return it to her.

She brought suit for the money, and it was held that she was entitled to recover.

"In the case of *Bowen v. Sullivan*, 62 Ind. 281, an employee in a paper manufactory, while engaged in assorting a bale of old paper purchased by the proprietor for manufacture, found certain lost genuine bank bills inclosed in a clean, unmarked and undirected envelope, which had formed part of such bale, and, for the purpose of ascertaining whether they were genuine, delivered them to the proprietor, upon his promise to return them, who upon demand refused to do so, whereupon the finder instituted suit for their value. Held, that she was entitled to recover the value of the bank bills as against the defendant.

"In *Durfee v. Jones*, 11 R. I. 588, the plaintiff had bought an old safe and soon thereafter instructed his agent to sell it again, he in the meantime having permission to use it. The agent found between the outer casing and the lining a roll of bank bills belonging to some person unknown, whereupon the owner of the safe first demanded the money, and then demanded the safe and its contents as they were when the agent received them. The agent returned the safe but retained the money. In an action brought by the owner of the safe for the money found, held, that as against the plaintiff the agent was entitled to retain the money, and that the place where it was found made no difference."

The finder of the property by complying with Sections 15317 to 15320, inclusive, of Chapter 132 of the

Revised Statutes of Missouri, 1939, may become the permanent owner of the property and under the holdings of the Supreme Court in the cases set out above he has a special ownership in the property and may obtain the special serial number as set out in Section 8397, supra.

Section 15317, R. S. Mo. 1939, reads as follows:

"If any person finds any money, goods, right in action, or other personal property, or valuable thing whatever, of the value of ten dollars or more, the owner of which is unknown, he shall, within ten days, make an affidavit before some justice of the county, stating when and where he found the same, that the owner is unknown to him, and that he has not secreted, withheld or disposed of any part thereof."

It is very noticeable under this section that it states that "if any person finds any money, goods \* \* \*". Under the facts in your request, if the man who originally alleged that he found the tires on the highway is not available to complete the procedure as above set out, then it may be assumed that he was guilty of larceny and the Sheriff could be considered as the finder of the tires. We say that for the reason that it has been held in this State in the case of State v. Buzard, supra, that where the owner has parted with the property involuntarily, the property is considered the same as lost property.

#### Conclusion

In view of the above authorities it is the opinion of this Department that a person finding automobile tires on the roadside, which bear no serial numbers, has sufficient ownership in the tires to obtain special numbers from the office of the Secretary of State. It is further the opinion

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of this Department that if stolen property is found by the Sheriff he may as a special owner or bailee obtain special numbers for the tires the same as if he was the permanent owner of the tires. It is further the opinion of this Department that if the tires are assigned a special number by the office of the Secretary of State, and then sold, after Chapter 132, supra, has been complied with, the bill of sale should contain all of the restrictions set out in said chapter, such as, the restoration of the property or its value if the real owner is found. It is further the opinion of this Department that the finder cannot sell the tires until he obtains the special numbers assigned him by the Secretary of State. We are assuming in this opinion that the tires are not new tires.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney-General

APPROVED:

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(Acting) VANE C. THURLO  
Attorney-General

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