

CONSTITUTIONAL LAW: penalty assessment plan for motor
HIGHWAY PATROL: vehicle violation would be
MOTOR VEHICLES: unconstitutional.

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September 15, 1948

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Col. Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Col. Waggoner:

This is in reply to your letter of recent date requesting an opinion from this department, which reads, in part, as follows:

"The State of Colorado has a system of penalty assessment on motor vehicle violations. We believe that such a system in the State of Missouri would be very helpful to this department in enabling more efficient regulation of traffic on our highways and permitting law enforcement in the State of Missouri to better curb the violator who repeatedly operates his vehicle in a careless and reckless manner. Such a system would materially lighten the load of our Magistrates, some of whom already have more cases than they can conveniently handle.

"The Patrol would like to get members of the legislature to introduce a similar bill at the next session of the assembly, but there is some question as to its constitutionality in our state. Therefore, we request that if it is not against the policy of your department you give us an opinion as to its constitutionality. We feel that this system would not only be a help to us and the Magistrates of Missouri but that it would be wholeheartedly accepted by the public. Of course, many of the municipalities in this state now use a similar penalty assessment plan."

The penalty assessment system in operation in the State of Colorado is evidently a plan whereby members of the State Highway Patrol are authorized, in certain cases, to assess an appropriate fine upon the arrest of a person violating any provisions of the law relating to motor vehicles and highways which constitute a misdemeanor. A list of the various offenses and the uniform penalty to be assessed for the violation thereof is compiled and set out in the statute. Additional uniform penalties are provided for further violations which occur in a specified period of time. This plan is administered in the following manner:

At the discretion of the arresting officer, the arresting officer may give notice at the time of the arrest to the person in charge of or operating such motor vehicle which notice shall be in the form of a penalty assessment for any misdemeanor specified by statute. Provided, however, that the person in charge of said motor vehicle or who appears to be guilty of such misdemeanor elects forthwith and at the time of such arrest to accept and agree to pay such penalty assessment in lieu of further proceeding or defense against such misdemeanor charge in court. Acceptance and payment of the prescribed penalty assessment set forth by statute shall be deemed a complete satisfaction for the violation and the violator shall be given a receipt which so states. Such penalty assessment in the amount specified by statute must be paid at the office of the supervisor of the motor vehicle department either in person or by registered mail within five days from the date of the arrest. If such penalty assessment be not so paid said violator shall be proceeded against as by law provided for a violation of this article for misdemeanors and such violator shall be subject to all fines, jail sentences or other penalties set forth in this article and more especially as set forth by statute if and when such violator is found guilty of a misdemeanor by a court of competent jurisdiction. The notice specified by statute shall be construed to be a summons as for a charge of a misdemeanor under this article in the event that the violator

fails or refuses to pay the penalty assessment herein prescribed within five days from the date of the arrest to the supervisor of the motor vehicle department and such notice shall be in such form as prescribed by law and to conform with this act so as to show the nature of the charge and the venue of the court in which such charge shall be heard in the event that the penalty assessment prescribed herein is not paid and the prosecution as for misdemeanor shall be thereafter heard in such court. In the event that a prosecution be had hereunder the violator shall be privileged to answer the charge made against him in the manner and within the time and subject to the other provisions of this article relating to prosecution for misdemeanors.

A plan such as that proposed would, in effect, amount to the summary charging, convicting and punishing of persons for certain crimes by an arresting officer. It is provided in Article I, Section 17 of the Missouri Constitution, 1945, that no person shall be prosecuted criminally for a misdemeanor otherwise than by indictment or information. Said provision reads:

"That no person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information, which shall be concurrent remedies, but this shall not be applied to cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor to prevent arrests and preliminary examination in any criminal case."

The above constitutional provision is implemented with regard to misdemeanors in the magistrate court in the Laws of Missouri, 1945, page 750, Sections 2 and 3. Said Sections 2 and 3 provide, in part, as follows:

"Prosecutions before magistrates for misdemeanors shall be by information, which shall set forth the offense in plain and concise language, with the name of the person or persons charged therewith: * * *"

"All such informations shall be made by the prosecuting attorney of the county in which the offense may be prosecuted, under his oath of office, and shall be filed with the magistrate as soon as practicable, and before the party or parties accused shall be put upon their trial, or required to answer the charge for which they may be held in custody: * * *"

Further, it has been held by the Supreme Court of Missouri in the case of State v. McKinley, 111 S.W. (2d) 115, that there can be no trial, conviction or punishment for a crime without a formal accusation. The court said, at page 118:

"There being no information in the case after the plea in abatement was sustained, the court was without jurisdiction to try the appellant on the charge of attempted burglary. Section 12, article 2 of the State Constitution provides: 'No person shall be prosecuted criminally for felony or misdemeanor otherwise than by indictment or information, which shall be concurrent remedies.' It is fundamental law that: 'There can be no trial, conviction or punishment for a crime without a formal and sufficient accusation.' 31 C. J. Sec. 1, p. 559, Sec. 152, p. 638; 14 R.C.L. Sec. 2, p. 152. * * *"

The administration of said proposed plan would invest judicial discretion in members of the Highway Patrol. The Highway Patrol would be allowed to inflict punishment for the violation of a crime in an arbitrary manner without the benefit of formal procedure to insure the rights and safety of the offender. The duties and functions of the courts and prosecuting attorneys in this matter are definitely and specifically set out and must be performed in strict compliance with the law. These duties and functions cannot be delegated in the manner proposed. The constitutional guaranty of such offenders must be preserved. Such a plan cannot be countenanced in view of the Constitution and other provisions of the law.

With regard to the fact that many municipalities in this state now use similar penalty assessment plans, it is sufficient to say that the above constitutional provision has no application in those cases for the reason that the violation of a city

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ordinance is not the commission of a crime. Prosecutions for such offenses are not criminal in nature. Ex parte Lewis, 328 Mo. 843, 848; Ex parte Hollwedell, 74 Mo. 395, l.c. 400 and 401.

Conclusion.

It is the opinion of this office that a penalty assessment plan applicable to motor vehicle violations constituting misdemeanors would be unconstitutional under the provisions of the Missouri Constitution.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General



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Enc.