

1496.

CRIMINAL LAW—CORPORATION MAY BE PROSECUTED FOR VIOLATION OF SECTIONS 7246 AND 7248-1, GENERAL CODE.

SYLLABUS:

A corporation may be prosecuted criminally for a violation of Sections 7246 and 7248-1 of the General Code.

COLUMBUS, OHIO, February 6, 1930.

HON. R. H. BOSTWICK, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“The prosecutor’s office of an adjoining county and our office disagree as to the construction to be placed upon Sections 7246 and 7248-1 of the General Code.

Our difference of opinion arises over the part of each section which in substance says, ‘No truck etc., shall be operated upon the improved public highways etc.’

The facts are: That a corporation’s business is to haul freight on a fleet of trucks from city to city. This corporation hires drivers for these trucks. A truck is overloaded somewhere and the driver is arrested under either of these two sections, also the corporation is charged with the same offense.

Now our question is, was it the purpose and intent of the Legislature as they worded these two sections to include the corporation. In other words, could the corporation be properly charged with the operation of the truck in violation of either of these two sections.

We will appreciate very much your opinion on this question.”

Section 7246 of the General Code, provides in part as follows:

“No traction engine or steam roller weighing in excess of twelve tons, or no trailer, semi-trailer, wagon, truck, automobile truck, commercial tractor, or other vehicle, whether propelled by muscular or motor power, weighing in excess of ten tons, including weight of vehicle and load, shall be operated over and upon the improved public highways and streets, bridges or culverts within the state, except as provided in this chapter.
* * * ”

Section 7248-1, General Code, provides in part as follows:

“No vehicle shall be operated upon the improved public highways and streets, bridges or culverts within this state, having a gross weight, including load, greater than sixteen thousand pounds on both wheels of one axle, when such vehicle is equipped with solid rubber tires or greater than eighteen thousand pounds on both wheels of one axle when such vehicle is equipped with pneumatic tires.
* * * ”

Section 13421-17 of the General Code, provided the penalty for violations of the above quoted sections, and is as follows:

“Whoever violates any of the provisions of Sections 7246 to 7250 inclusive, of the General Code shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars

nor more than one hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than ninety days, or both fined and imprisoned."

The word "whoever" as used in Section 13421-17 of the General Code, is defined in Section 12371, General Code, as follows:

"In the interpretation of part four the word 'whoever' includes all persons, natural and artificial, partners, principals, agents, employes, and all officials, public or private."

Section 13421-17 is included in Part IV of the General Code. Sections 7246 and 7248-1 of the General Code are incorporated in the provisions of Section 13421-17 by reference and are as much a part of this section as if they were a part of the section itself.

Prior to the enactment of Section 12371 of the General Code, a corporation could not be prosecuted in Ohio for criminal offenses except for a violation of a statute which expressly designated artificial persons as well as natural persons.

In the case of *Leo Ebert Brewing Company vs. State*, 2 O. C. C. (N. S.) at page 538, the court says:

"'Whoever' and 'person' are the words almost, if not invariably employed in our statutes to designate the one on whom a penalty is imposed for their violation; they are synonomous in meaning and refer to natural persons, and where an artificial person is intended it is so designated in the statute, an example of which is found in Section 6949, Revised Statutes, under the head of Nuisances, in which and following sections corporations are made expressly indictable."

However, since the enactment of Section 12371 of the General Code, corporations are criminally liable for violations of the statutes the same as individuals. It is true there are crimes of which from their very nature, such as bigamy for example, they can not be guilty. Corporations act through their agents and they are capable of doing the things that their agents do when acting within the scope of their authority. A corporation is capable of operating automobiles upon the highways and may be criminally liable for the acts of its agents when vehicles are operated by such agents in violation of law when such operation is assumed to be done by the agent when exercising authorized powers.

The general rule as to the criminal liability of a corporation for the acts of its agent is stated in Ruling Case Law as follows:

"As is case of torts the general rule prevails that a corporation may be criminally liable for the acts of an officer or agent assumed to be done by him when exercising authorized powers, and without proof that his act was expressly authorized or approved by the corporation." 7 Ruling Case Law, page 766.

In view of the statutes and authorities cited herein, I am of the opinion that a corporation may be prosecuted criminally for a violation of Sections 7246 and 7248-1 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.