

was to prevent damage to the highways of the state. This is a penal statute, and although penal statutes are to be construed strictly, yet they are not to be construed so strictly as to defeat the obvious intention of the Legislature, nor is the rule to be so applied as to exclude from the operation of the statute cases which the words in their ordinary acceptance, or in the sense in which the Legislature manifestly used them, would comprehend.

This doctrine was laid down in *United States vs. Willberger*, 5 Wheat., p. 76, and numerous other cases cited in Black on Interpretation of Laws, page 288. Chief Justice Marshall, in *United States vs. Willberger*, *supra*, said in part:

“It is the Legislature, not the court, which is to define a crime or ordain its punishment. It is said that notwithstanding this rule, the intention of the law makers must govern in the construction of penal as well as other statutes.”

The Supreme Court of North Carolina, in *Hines vs. Wilmington, & W. R. Co.*, 95 N. C. 434, in discussing penal statutes, said:

“All such enactments as to their words, clauses, several parts and the whole must be construed strictly together, but as well and as certainly in all respects in the light of reason. This rule, however, is never to be applied so strictly and unreasonably as to defeat the clear intention of the Legislature.”

The wording of Section 13421-12, General Code, *supra*, fairly construed, indicates that it was the intention of the General Assembly that the only permissible departure from a smooth tire surface in the case of tractors would be in the use of cleats. The intention of the Legislature also appears to have been that no projections on the wheels or tires of tractors should extend beyond such cleats, when used, in such a manner to damage the improved highways.

In the instant case we have a tractor without cleats, but equipped with spade lugs, which are wedge-shaped devices, apparently used to obtain better traction. I assume, from what I understand spade lugs to be, that these extend vertically beyond where cleats would normally extend. In my view, it was clearly the intention of the Legislature to inhibit such use on the highways.

Specifically answering your question, I am of the opinion that the operation of a tractor, such as you describe, over improved highways of the state, would be illegal if the spade lugs project from the wheels or tires of the tractor in such a manner as to injure the highway.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1136.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN MERCER COUNTY.

COLUMBUS, OHIO, November 1, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*