

1135.

TRACTOR—EQUIPPED WITH SPADE LUGS AND WITHOUT CLEATS—
WHEN SECTION 13421-12, GENERAL CODE, VIOLATED.

SYLLABUS:

1. *The intent of the Legislature in enacting Section 13421-12, General Code, was to prevent damage by tractors to the improved highways of the state.*
2. *The use of "spade lugs", although not specifically mentioned in Section 13421-12, General Code, on tractors in such a manner as to damage improved highways, would constitute a violation of said section.*

COLUMBUS, OHIO, November 1, 1929.

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

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"I would appreciate very much if you would at your earliest opportunity give me your interpretation of the first six lines of Section 13421-12 of the General Code of Ohio.

A case has been presented to me in which the tractor in question has no cleats (if my understanding of a cleat is correct), and, therefore, the wheels are not equipped with picks, spuds, spikes, chains or other projections of any kind extending beyond the cleats.

This tractor, however, is equipped with spade lugs, so-called, those lugs having a narrow surface about 4 inches long that touch the road and extend out from the wheel 4 to 6 inches, depending on how much they have been worn. The question under this statement of facts is whether or not a tractor without cleats, equipped with spade lugs, is or is not legal under the statute.

My understanding of a cleat is a projection running across the surface of a wheel from side to side."

That portion of Section 13421-12, General Code, to which you refer, reads:

"Whoever drives over the improved highways of the state, or any political subdivision thereof, a traction engine or tractor with tires or wheels equipped with ice picks, spuds, spikes, chains or other projections of any kind extending beyond the cleats shall be fined for each offense not less than ten dollars nor more than one hundred dollars."

In Opinion No. 665, found on page 1806, Vol. 2, Opinions of the Attorney General for 1917, the word "cleat" is defined as "a strip of wood or iron fastened across other material, as a board or boards, to strengthen, keep in place, prevent slipping; a piece of wood nailed down to secure something from slipping." The word "cleat" is defined by both Webster and Standard Dictionary as "a strip". You advise that the tractor in question is equipped with "spade lugs", having a narrow surface about four inches long, that touch the road and that these lugs extend out from the wheel four to six inches, depending upon how much they have been worn. I have consulted with the Director of Highways as to types of spade lugs in use on tractors in Ohio and find that these lugs are used frequently for the same purpose that cleats are used—to give better traction.

It is obvious that the intent of the Legislature in enacting Section 13421-12, supra,

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 acceptation, or in the sense in which the Legislature manifestly used them, would comprehend.

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

1136.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN MERCER COUNTY.

COLUMBUS, OHIO, November 1, 1929.

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