

Mortgaged Property, Prosecution for Removal of. Removal of Mortgaged Property, Prosecution for.

The prosecution of a person who removed mortgaged property prior to March 14, 1913, is not barred by the provisions of Chap. 86, Laws 1913.

August 1st, 1913.

Hon. D. W. Doyle,
County Attorney,
Conrad, Montana.

Dear Sir:

I am in receipt of your letter of July 30, 1913, submitting the question:

"Are prosecutions for the offense of removing mortgaged property committed prior to March 14th, 1913, barred by the provisions of Chapter 86 of the enactment of the Thirteenth Legislative Assembly?"

The opinion accompanying your letter is to the effect that such prosecutions are not barred. Sec. 123 of the Revised Codes of 1907 is as follows:

"The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act."

You will note the expression in this law that prior offenses may be prosecuted under the old law unless it is otherwise "expressly declared in the repealing act." Nowhere in said Chapter 86 is there any expression, either expressly or impliedly, that it was the intention of the legislature to relieve from punishment persons who had violated the then existing law prior to the approval of said Chapter 86, to-wit: March 14th, 1913. In fact Sec. 8689 of the Revised Codes, which declares it a crime to remove mortgaged chattels, is not referred to in Chapter 86 in any manner except by implication. If said Chapter 86 has the effect of repealing said Sec. 8689, as to prior offenses, then the offender could not be prosecuted under the old law, for it is no longer in existence. Neither could he be prosecuted under the provisions of Chapter 86, because such law was not in existence at the time of the commission of the offense. The result would be that persons who had committed this offense prior to approval of said Chapter 86 would be free of all prosecutions. In other words, that said Chapter 86 would operate as a complete immunity as to all such previous offenses. It will require the controlling opinion of a court of last resort to convince me that such is the intent, meaning or effect of the law. Your opinion is affirmed.

Yours very truly,

D. M. KELLY,
Attorney General.