

Opinion No. 167**Taxation—Motor Vehicles—U. S. Mail
Carriers—Mail—Sheriffs—Levy
—Conflict of Laws.**

HELD: If the sheriff fully complies with his duty under the laws of the United States in relation to the collection of a tax on a motor vehicle, which procedure may require a levy and detention of a car (not at the time loaded with mail or carrying mail), the sheriff will be fully protected by his rights under the laws of this state and will not be interfering with any federal law.

April 15, 1933.

You have requested my opinion on the right of the sheriff of your county to levy upon the car of a mail carrier who refuses to take out an automobile license.

I judge that your inquiry is not as to the procedure in relation to the levy, rather that same is as to the rights and disabilities by virtue of the federal statute.

“Whoever shall knowingly and wilfully obstruct or retard the passage of the mail, or any carriage, horse, driver or carrier, or car, steamboat, or other conveyance or vessel carrying the same, shall be fined not more than \$100.00, or imprisoned not more than six months, or both.” 18 U. S. C. A. Section 324. (Criminal Code, Section 201).

A statute very similar to this has been the law of the United States for

many years. Two old state decisions have held it was lawful to levy upon or attach a steamboat used in the conveyance of mail but not loaded at the time of levy. *Parker v. Porter*, 6 La. 169; *Lathrop v. Middleton*, 23 Cal. 257. The distinction appears to be that it is a violation of the law to levy upon or hold a conveyance loaded with mail or in the act of transporting same but it is not a violation of the law to levy upon same when not engaged in the conveyance or loaded therewith. It has been held that to hold a horse or conveyance in the midst of a trip, when the conveyance is loaded with mail is a violation of this statute. If the levy is made or lien claimed when the horse or conveyance is not so used, the statute is not a defense as against the claim of lien nor will a criminal prosecution lie. *U. S. v. McCracken*, Fed. Cas. 15664.

It has been held that the keeper of a tollgate may require payment of the toll by a mail carrier before permitting his passage. *Harper v. Endert*, 103 Fed. 911. In two recent cases in the District of Columbia it has been held that employees of the government must comply with the ordinances of the district in relation to turning off a motor when the car is not occupied and carrying such tags as are required under the ordinances. *White v. D. C.* 4 Fed. (2) 163; *Croson v. D. C.*, 2 Fed. (2) 924.

From the foregoing cases it is plain that if the sheriff fully complies with his duty under the laws of the United States in relation to the collection of a tax on a motor vehicle, which procedure may require a levy and detention of a car (not at the time loaded with mail or carrying mail), the sheriff will be fully protected by his rights under the laws of this state and will not be interfering with the federal statute quoted, or any other federal law which we can discover.