May 17, 1939

Honorable C. W. Lovejoy
Insurance Commissioner
State House
Augusta, Maine

Dear Commissioner:

On April 27, you wrote to this office citing the case of three young men who had broken into a barn and, while in the process of siphoning some gasoline from the tank of a truck, a fire was started by reason of the negligent act of one of the young men who struck a match to see whether or not the can into which the gasoline was being siphoned was full, as a result of which the barn was burned together with all stock and equipment. You request our opinion as to whether or not, in a case of this kind, the young men might have been arrested and convicted for the crime of arson.

In "Bishop on Criminal Law", Volume 2, Section 15, is found the following statement:

> "So that, for example, if one not meaning to burn a house accidentally burns it while endeavoring to do some other wrong he is guilty of arson, provided the wrong that he intends is of sufficient magnitude.",

and the case of Lusk v. The State, reported in Volume LXIV, of the Missouri Reports, at Page 850, is cited by Bishop. In this case three men went to the house of one Crum and, after having an argument with Crum and his wife, threatened to kill Crum, drove him and his wife from the house, broke their dishes, and tore their bed clothing into pieces and scattered it over the house. It was shown that all the fire about the house consisted of a few coals in the fireplace and that soon after Crum and his wife were driven from the house by the defendants the house was seen to be in flames and was completely consumed. The case upholds a conviction

of arson and uses the following language, in part:

> "Where parties combine to commit crime the law imputes the guilt of each to all thus engaged and pronounces all guilty of any crime committed by any in the execution of the common purpose, as one of its natural and probable consequences, even though none of the parties intended at the outset to do the particular thing constituting the crime.
>
> If the act is not the natural and probable outcome of the common design, but is the independent act of some of the party, conceived of by them, and outside of the common purpose, those not participating in it are not responsible for this independent act."

The few other cases have quoted with approval the statement from Bishop's Criminal Law above quoted, but we can find no cases in Maine, or in any of the Northern States, which have been decided on the basis of this statement. The fact that our Courts have never been called upon to pass upon a similar case may be due to the fact that in cases similar to the one you cite, prosecutors have found it easier and less troublesome to indict and convict for Breaking and Entering or Burglary, the punishment for which crimes is, in most instances, as severe as arson.

Rather than advise prosecution for arson in similar cases under the present wording of our arson statutes, and in the absence of any decisions which would support such conviction, I believe it would be advisable to seek to amend our statutes definitely stating that the accidental burning of a building resulting from an act done while the respondent was committing another crime should be considered arson, and it is my understanding that an amendment is being considered by Massachusetts and probably some other of the New England States.

Respectfully yours,

Franz U. Burkett
Attorney General

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