

IN RE: Matter of Interstate Extradition.

3571 RS mo 1929

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January 23, 1933

Hon. Guy B. Park
Governor of the State of Missouri
Jefferson City, Missouri

Dear Governor:

Upon the request of your Department for an opinion on the law as it relates generally to interstate extradition, it is my privilege to submit to you the following:

The United States Constitution, Article IV, Section 2, provides:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime - - -".

18 U. S. C. A. Section 662 provides:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the

fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory".

18 U. S. C. A. Section 663 provides:

"Any agent so appointed who receives the fugitive into his custody shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than \$500. or imprisoned not more than one year".

Section 3587 Revised Statutes Missouri, 1929, provides:

"Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable".

Section 3591 Revised Statutes Missouri, 1929, provides:

"Whenever the executive of any other state shall demand of the executive of this state any person as a fugitive from justice, and shall have complied with the requisites of the act of congress in that case made and provided, it shall be the duty of the executive of this state to issue his warrant, under the seal of the state, directed to any sheriff, coroner, or other person whom he may think fit to entrust with the execution of such warrant".

"Before a requisition for delivery of an alleged fugitive is honored, it must appear there is a demand with a certified copy of the indictment of one who is shown to be a fugitive from justice".

State ex rel Gaines vs. Westheus, 2 S.W. (2nd)
612, 318 Mo. 928.

"The requisition for delivery of a fugitive from justice will not be honored by the governor of an asylum state until all the requirements of 18 U. S. C. A. section number 662 are complied with.

Ex parte Ellis, 9 S. W. (2nd) 544.

The Governor's duty to surrender a fugitive upon the demand of the governor of another state is not absolute and unqualified, but depends upon the circumstances of each particular case.

State vs. Saunders, 232 S. W. 973, 288 Mo. 640.

To be a "fugitive from justice " a person must incur guilt before leaving the demanding state, and be within the state from which return is demanded.

Ex parte Ellis, 9 S. W. (2) 544.

The governor of the asylum state can waive its right to have the fugitive tried on a charge then pending in its courts.

Hansen vs. Edwards, 240 S. W. 489, 210 Mo. App.35.

A criminal charge sufficient under the laws of the demanding state will authorize approval of granting of requisition.

Flournoy vs. Owens, 275 S. W. 923, 310 Mo. 355.

Since extradition between states may be granted without notice or hearing, it is immaterial that the petitioner is given a hearing by the governor's private secretary instead of the governor.

Ex parte Pelinski, 213 S. W. 809.

The character of evidence at a hearing authorizing a governor to grant a requisition is not a matter of particular concern, since not prescribed by the federal statutes, and it need only be satisfactory to the governor's mind.

Albright vs. Clinger, 234 S. W. 57, 290 Mo. 83.

In the light of the above cases set out, there being no effort to completely digest the whole law of interstate extradition, but simply touch the high places as each case must in the final analysis, stand on its own footing, so long as the Constitution, Federal and State Statutes above set out are complied with, it is the opinion of this office that the following rules of practice which seem to have been so uniformly approved and followed by the authorities of several states, should be followed as a matter of policy by the State of Missouri.

RULES OF PRACTICE WHEN MISSOURI
IS DEMANDING STATE.

The application for the requisition must be made by the prosecuting attorney for the county in which the offense was committed, and must be in duplicate original papers or certified copies thereof. The following must appear by the certificate of the prosecuting attorney: (a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled in capital letters - for example: JOHN DOE. (b) that in his opinion the ends of public justice require that the alleged criminal be brought to this state for trial at the public expense. (c) That he believes he has sufficient evidence to secure the conviction of the fugitive. (d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive. (e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be. (f) If the fugitive is known to be under either civil or criminal arrest in the state or territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based should be stated. (g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects. (h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same. (i) If the offense charged is not of recent occurrence, a satisfactory reason should be given for the delay in making the application.

RULES OF PRACTICE WHEN MISSOURI
IS THE ASYLUM STATE.

Before the Governor of Missouri
should grant requisition.

1. In all cases of fraud, false pretenses, embezzlement, or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required or a sufficient reason be given for the absence of such affidavit.
2. Proof by affidavit, of facts and circumstances satisfying the executive that the alleged criminal has fled from the justice of the state, and is in the state on whose executive the demand is requested to be made, must be given. The fact that the alleged ~~stimingl~~ was in the state where the alleged crime was committed at the time of the commission thereof, and is found in the state upon which the requisition was made, shall be sufficient evidence in the absence of other proof, and that he is a fugitive from justice.

3. If an indictment has been found certified copies in duplicate must accompany the application. 4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereof, if any, must be furnished upon an application. 5. The official character of the officer taking the affidavits or depositions and of the officer who issued the warrants must be duly certified. 6. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another state, not having been found in the state on which the first was granted, new or certified copies of the papers in conformity with the above rules must be furnished. 7. In the case of any person who has been convicted of any crime and escapes after conviction, or while serving his sentence, the application may be made by the jailor, sheriff or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same. 8. No requisition will be made for the extradition of any fugitive except in compliance with these rules. And in any interstate extradition in order for an "INFORMATION to constitute such an affidavit before a magistrate" as is required by Section 5278 of the Compiled Statutes of the United States, it must be sworn to positively before a magistrate. A clerk of a court is not a magistrate, neither is a notary public.

It is the opinion of this office that if the above rules are adopted matters of extradition will be greatly expedited, and that the law will be properly complied with. In matters not touched upon in the above opinion, which would be an extraordinary case, it will be necessary to advise with you upon the happening of such a case, and it will be our pleasure.

Very truly yours,

Wm. Orr Sawyers
Assistant Attorney General.

Approved:

Roy McKittrick
Attorney General.