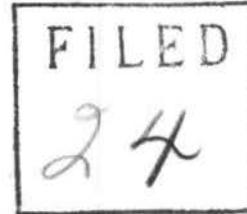


GOVERNOR: EXTRADITION: Present rendition warrant
issued by the Governor is valid.

February 17, 1943

Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

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Dear Sir:

Your request for an opinion, dated February 15, 1943, in reference to a letter from Charles S. Frazier, Assistant Circuit Attorney of the city of St. Louis, concerning your rendition warrant, has been received.

Included in this request is a copy of a rendition warrant issued by you on the 22nd day of January, 1943, upon the demand of the Governor of the State of Illinois, for Ike Finkelstein, as a fugitive from justice. The charge contained in the rendition warrant is arson, and the messenger named is Frank T. Kern. An identical form of this warrant will be hereinafter set out in a quotation cited in an opinion by the Supreme Court of this State.

A particular paragraph in the letter from Charles S. Frazier, stating the facts to you, is as follows:

"The Hon. William L. Mason, Judge of the Circuit Court of St. Louis, division No. 10, in whose court the writ of habeas corpus was filed, pointed out to me that the rendition warrant is void on its face in that it does not state that the copy of the indictment found is certified to be authentic by the Governor of Illinois, in compliance with U. S. Rev. Stat. sec. 5278 (18 U. S. C. A., sec. 662). I do not agree with Judge Mason on this point. I think the language employed in the warrant follows the Federal Statute and is sufficient. I am writing you however

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and am enclosing a copy of that part of the Federal Statute referred to and a copy of the rendition warrant together with the suggested change, for the reason that if the lawyers in St. Louis find out that Judge Mason considers your rendition warrant void on its face, all of them will file their writs before him and it will be difficult to return fugitives to the various demanding states."

Section 662, Title 18, U. S. C. A., reads as follows:

"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."

This section also appears in Volume 2, page 3988 R. S. Missouri, 1939. It will be noticed that this section specifically says:

" * * * certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, * * * * * ."

In reading the entire section, we find that the above partial quotation does not apply to the certification of the indictment or affidavit made before the magistrate, but refers to the words, "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice." In other words, the demand which you receive, and which is not a part of the warrant is usually authenticated by the Governor of the demanding State. However, we are citing cases which hold to the effect that a warrant issued by you is prima facie valid and it takes necessary evidence to

declare it invalid.

Extradition as between states is governed by the federal constitution, federal statutes and federal decisions. It was so held by the Supreme Court of this State in the case of Keeton v. Gaiser et al, 55 S. W. (2d) 302, par. 1, where the court said:

"The extradition of fugitives from justice as between the several states is governed by the Constitution and statutes of the United States, and federal decisions are controlling. Section 2 of article 4 of the United States Constitution provides 'a person charged in any state with treason, felony, or other crime' shall, on demand of the executive authority thereof, be delivered up by any other state to which he has fled. Section 5278, R. S. U. S. (18 USCA Sec. 662) makes it the duty of the executive authority of the asylum state to cause the fugitive to be arrested and held for extradition on demand of the executive authority of the requisitioning state and production of a copy of an indictment found or affidavit filed before a magistrate therein, charging him with treason, felony, or other crime, certified as the statute requires. Our own statutes, sections 1458 and 3591, R. S. Mo. 1929 (Mo. St. Ann. Secs. 1458, 3591), conform to these federal requirements as needs they must."

Section 3591 mentioned in the above quotation is now Section 3980 R. S. Missouri, 1939.

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Also, in the case of United States ex rel McCline v. Meyering, Sheriff, 75 F. (2d) 716, par. 1, the Circuit Court of Appeals, Seventh District said:

"Extradition proceedings are not creatures of state law, but are controlled by the Constitution of the United States, article 4, sec. 2, and by sections 5278, 5279, of the Revised Statutes (18 USCA Secs. 662, 663), passed thereunder. * *"

In the case of Collins et al v. Traeger, Sheriff, 27 F (2d) 842, l. c. 844, the Circuit Court of Appeals of the Ninth Circuit, in holding that a warrant which did not even state that the fugitive was a fugitive from justice is presumed to be valid until overthrown by contrary proof, said:

"Appellant contends that the warrant is void upon its face for want of a recital that the affidavit or verified complaint was made before a magistrate. There is nothing in the statutes prescribing the form or contents of the warrant, and the decided cases exhibit great diversity. For this jurisdiction, however, we think the rule established that such a warrant is aided by the presumption of official regularity, and under that presumption the warrant here is prima facie valid. Where there is no indictment, an essential condition precedent to the exercise of the power to extradite is an

'affidavit made before a magistrate' of the demanding state. But equally essential is it that the person demanded be a 'fugitive from justice,' and in *Munsey v. Clough*, 196 U. S. 364, 25 S. Ct. 282, 49 L. Ed. 515, it is said:

"The issuing of the warrant by him (Governor of the asylum state), with or without a recital therein that the person demanded is a fugitive from justice, must be regarded as sufficient to justify the removal, until the presumption in favor of the legality and regularity of the warrant is overthrown by contrary proof in a legal proceeding to review the action of the Governor. * * * * *

Also, in the case of *Black v. Miller et al*, 59 F. (2d) 687, 1. c. 690, the Circuit Court of Appeals, Ninth District, said:

"The record here shows that the accused is in custody under an extradition warrant issued by the Governor of Washington, a warrant which appears upon its face to be warranted by the Constitution and laws of the United States. After a careful consideration of all the evidence we do not find that the petitioner herein has overcome the prima facie case thus made by the warrant."

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Also, the United States Court of Appeals for the District of Columbia, in the case of Lee Won Sing v. Cottone, 123 F. (2d) 169, l. c. 172, said:

"Whether or not a person is, within this definition, a fugitive from justice is a question of fact. And in a habeas corpus proceeding questioning the legality of detention for extradition the fact alone that a rendition warrant has been issued by the governor of the asylum state makes a prima facie case of fugitivity, which unless overthrown by the alleged fugitive by clear and conclusive proof, will, so far as the question of fugitivity is concerned, sustain detention. * *"
(Underscoring ours.)

The Supreme Court of this State in passing upon a warrant identical with the warrant which has been attacked in St. Louis, in the case of Ex parte Davis, 62 S. W. (2d) 1086, l. c. 1088, said:

"The third assignment made is that the rendition warrant issued by the Governor of this state fails affirmatively to show on its face a recital of the facts necessary to its issuance. The warrant is as follows:

"'State of Missouri

"'To the Sheriff or Marshal of any County or City in this State.

"Whereas, the Governor of the State of Wisconsin has demanded of the Governor of this State, William Charles Davis fugitive from justice from said State; and Whereas, the Governor of Wisconsin has produced to me a copy of an affidavit in said State certified to be authentic, charging said fugitive with having committed the crime of forgery and uttering,

"Now, Therefore, I, Guy B. Park, Governor of the State of Missouri, do hereby command you to arrest the said William Charles Davis anywhere within the limits of this State, and him secure and deliver to Walter English who is the agent of said State of Wisconsin duly authorized to receive the said fugitive.

"And I do hereby command all Sheriffs, Marshals, Constables and Police Officers to whom this warrant may be shown to aid and assist in the execution of this process. And you will make due return to me on this warrant of your proceeding thereunder.

"In testimony whereof,' etc.

"The case on which the petitioner relies is In re Hagan, 295 Mo. 435, 245 S. W. 336. And the first point made is that the rendition warrant merely recites the Governor of Wisconsin 'has demanded of the Governor

of this State William Charles Davis, fugitive from justice from said State,' instead of saying Davis was demanded as a fugitive from justice. In short, the objection is that the word 'as' is omitted after the name of the petitioner and before the word 'fugitive.' The Hagan decision does generally hold a recital of every jurisdictional fact necessary to the issuance of a rendition warrant must appear on its face. But we do not understand the case to go as far as petitioner contends. The warrant there considered omitted the word 'as,' and the opinion says (295 Mo. loc. cit. 446, 245 S. W. 336, loc. cit. 339): 'it is doubtful as to whether or not it recites that petitioner is a "fugitive from justice" from Kansas.' But there was no square holding on this, or that the warrant was bad because it failed to recite the accused was demanded as a fugitive. If the case had so held, we would be compelled to disagree with it. Where a requisition demands D, a fugitive from justice, the latter words are descriptive and mean D is demanded as a fugitive, or because he is a fugitive. The whole context of the requisition so shows. Furthermore it has been held by the United States Supreme Court the warrant is presumptively good 'with or without a recital therein that the person demanded is a fugitive from justice.' *Munsey v. Clough*, 196 U. S. 364, 372, 25 S. Ct. 282, 284, 49 L. Ed. 515."

And, in the same case, at l. c. 1090, the court said:

"In view of these authorities, especially the federal decisions, we are constrained to hold the rendition warrant in the instant case was valid, or at least prima facie valid. It therefore results that the prisoner must be remanded to the custody of the respondent."

However, since Section 662, Title 18, U. S. C. A., may be considered ambiguous, we suggest that the words, "by him", as suggested by Judge Mason of the Circuit Court of the city of St. Louis, be inserted in the seventh line of the body of the warrant, between the words, "in said State certified," and the words, "to be authentic." We suggest this for the reason that under the holding of Judge Mason, it would be necessary for you to surrender the original papers on a subpoena, whenever a habeas corpus proceeding is brought in that court. The warrant's validity is not questioned but it would only be necessary to insert the words, "by him" with a pen, and if any other warrants are printed, the words should be inserted in the new warrants.

CONCLUSION

It is the opinion of this department, that your rendition warrant, as printed, is valid, but could be subject to attack, which attack would be unsuccessful.

APPROVED:

Respectfully submitted,

ROY McKITTRICK
Attorney General of Missouri

W. J. BURKE
Assistant Attorney General

WJB:RW