

CONSTITUTIONAL LAW: House Committee Substitute for House Bills Nos. 13 and 39 is not unconstitutional nor in conflict with the extradition laws.

August 16, 1951

8-20-51



Honorable Forrest Smith
Governor of the State of Missouri
Jefferson City, Missouri

Dear Governor Smith:

Your letter of recent date requesting an opinion of this department on House Committee Substitute for House Bills Nos. 13 and 39, reads as follows:

"House Committee Substitute for House Bills Nos. 13 and 39, 'Truly Agreed To' copy of which is attached for your convenience, has been regularly passed by the General Assembly and delivered to me for executive action on or before August 25, 1951.

"Will you kindly render your opinion as to whether or not this Substitute Bill, if it were to become a law, would be in conflict with the Constitution of this State, the United States Constitution, or with federal laws or statutes."

In searching for authority on the subject involved in this bill we find that several states have adopted a similar law as the one set out and referred to herein and it has been designated in most states as a uniform reciprocal enforcement support law.

A few of the states which have passed an act of this kind are Idaho, Session Laws, Regular 1951 (Extraordinary 1950), Chapter 238, page 492; Indiana, Acts of 1951, 87th Session, Chapter 224, page 640; Iowa, Code Annotated, Vol. 11, Chapter 252A, 1950 Pocket Parts, page 21; Kansas, Laws of Kansas 1951, Chapter 352, page 540; Montana, Revised Code 1947, 1951 Accumulative Pocket Supplement, Chapter 901, Pocket Parts, page 27; North Carolina, 1951 Session Laws, Chapter 317, page 256; and North Dakota, Laws of 1951, Chapter 122, page 180, and as this new law is of recent enactment taking effect within this year, there are no court decisions directly ruling upon this law.

However, the question of whether or not a person charged with failure to support those whom he is legally obligated to support

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can be extradited from one state to a state in which he had never been, has been before the courts in Habeas Corpus hearings, and the courts have held that he can be extradited.

In Vol. 35, G.J.S., Section 3, page 319, it is said:

" * * * * the right of interstate extradition or rendition is founded on and controlled by the constitution of the United States and effectuating federal statutes, which have been declared constitutional. Extradition being a federal and not a state matter, the federal law, and not the state law, is supreme, and any state legislation which conflicts with the federal law on the subject, as embodied in the constitution and effectuating statutes, is unconstitutional and void. However, to the extent that it aids and facilitates the operation of federal constitutional and statutory provisions, and is not inconsistent therewith, state legislation is proper, and must be followed. As the constitution applies only to fugitives from justice, a state may in the exercise of its reserved sovereign power provide for the surrender of persons who are indictable for crime in another state, but who have never fled from it.

"Constitutional and statutory provisions relating to interstate extradition should be liberally construed to effectuate their purposes; but, since such provisions involve the substantial rights of citizens, their essential elements and requirements have been required to be strictly followed.

"The federal Constitution guarantees no right of asylum to a person who has committed a crime in one state and fled to another."

(Underscoring ours)

Section 2, Clause 2, of Article 4 of the Constitution of the United States reads as follows:

"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."

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We believe that the above constitutional provision covers and applies to constructive flight as well as actual flight, and anyone who has committed an act in one state which results in a crime in another state can be said to be in constructive flight from the demanding state.

Section 3182, 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, District 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, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged. June 25, 1948, c. 645, 62 Stat. 822."

Section 548.010, R. S. No. 1949, reads as follows:

"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 execution of such warrant."

In the case of Ex parte Gornostayoff, 298 P. 55, the District Court of Appeal of the First District, Division 1, California, on April 8, 1931, on a Habeas Corpus hearing, wherein the petitioner was sought to be extradited from the State of California to the State of Ohio on a charge of failure to support two minor children the court said:

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"* * * * * Considering the character of the offense with which he is charged, his presence within the state was not necessary to enable him to commit the same.

"Petition denied."

In a later case the District Court of Appeal, First District, Division 2, California, on December 26, 1950, Ex parte Hayes, 225 P. Rep. 2d, in passing upon the same crime in a Habeas Corpus matter at l. c. 272, the court said:

"These allegations brought the case within the rule announced in In re Brewer, 61 Cal. App. 2d 388, 143 P. 2d 33. However the return shows that our Governor acted upon a requisition from the Governor of Oklahoma based upon an amended complaint which charges Hayes with wilful failure to provide for his children in Oklahoma and charges further that 'while not personally present in the State of Oklahoma (Hayes) committed the act complained of in the State of California, intentionally resulting in the commission of said crime in the State of Oklahoma.' The quoted allegation of the amended complaint takes this case out of the field of the Brewer case cited above and places it in that of In re Morgan, 86 Cal. App. 2d 217, 194 P. 2d 800. The Morgan case holds squarely that one who commits an act in California which intentionally results in a crime in the demanding state may be extradited to that state pursuant to Penal Code section 1549.1

"Writ discharged."

In the case of Ex parte Morgan decided by the District Court of Appeal, Second District, Division 2, California, June 15, 1948, 194 P. 2d 800, at l. c. 804 the court said:

"The statute in question in this proceeding is not an obstacle to the purposes of the federal extradition act. In Re Tenner, 20 Cal. 2d 670, 675, 128 P. 2d 338, 342, the court said: 'The validity of legislation in aid of the act of Congress concerning extradition is now well established (citing cases) and it has been held that a state may legislate upon a subject of extradition unprovided for because Congress

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failed to extend section 5278 of the Revised Statutes to the full limits of constitutional power. Innes v. Tobin, 240 U.S. 127, 36 S. Ct. 290, 60 L. Ed. 562."

The Morgan case, however, was one where the fugitive was charged with the crime of conspiracy with three other defendants but the point brought out by this citation is the fact, that the provisions of House Committee Substitute for House Bills Nos. 13 and 39 do not conflict with the Federal Constitution and laws on extradition, but in fact is an act to aid the act of Congress concerning extradition.

In the case of Ex parte Bledsoe, 227 P. Rep. 2d, 680, the Criminal Court of Appeals of Oklahoma, February 7, 1951, at l. c. 683 said:

" * * * * * The federal enactments relating to extradition do not expressly or impliedly cover a situation such as that presented in the case at bar, and, since they do not, it would seem that there is no conflict between the federal and state enactments and that the latter merely supplement the former. It is to be observed that there are no negative provisions in the U. S. Constitution or federal legislation forbidding the extradition of one not physically present at the scene of crime in the demanding state."

* * * * *

"Statutes adopted by the states are not necessarily invalid if they cover a field in which the Constitution empowers Congress to legislate. The regulation of interstate commerce is a matter exclusively within the power of Congress (Const., Art. I. sec. 8 clause 3) if and when it chooses to act, but if there is no federal statute covering a particular subject a state law is not invalid because it may in some manner affect commerce between the states, although such a law would become inoperative upon the adoption of a federal statute covering the same field as that embraced by the state legislation. A state law does not conflict with federal statutes if it does not impede the execution of the will and purpose of Congress (Cloverleaf

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Butter Co. v. Patterson, 315 U.S. 148, 157 (62 S. Ct. 491), 86 L. Ed. 754, 763) or if it does not cast an undue burden upon interstate commerce (Nippert v. City of Richmond, 327 U.S. 416, 425, 66 S. Ct. 586, 90 L. Ed. 760, 765, 162 A.L.R. 844) or if its effect on such commerce is only incidental or indirect. California v. Thompson, 313 U. S. 109, 113, 61 S. Ct. 930, 85 L. Ed. 1219, 1221."'"

(Underscoring is Court's Italics)

In the case of State v. Parrish, 242 Ala. 7, 1. c. 11, the court said:

"The question of extradition is treated with elaborate notes in United States Code Annotated, Constitution, Part 2, art. 2 sec.2, cl.2, and several questions material to this inquiry are noted. Pertinent references therein contained are:

"The constitutional provision relating to fugitives from justice as the history of its adoption will show, is in the nature of a treaty stipulation entered into for the purpose of securing a prompt and efficient administration of the criminal laws of the several states--an object of the first concern to the people of the entire country, and which each state is bound, in fidelity to the Constitution, to recognize. Appleyard v. Massachusetts (Mass. 1906) 203 U.S. 222, 27 S. Ct. 122, 51 L. Ed. 161, 7 Ann. Cas. 1073. See, also, McNichols v. Pease (Ill. 1907) 207 U.S. 100, 28 S. Ct. 58, 52 L. Ed. 121.

"This provision of the Constitution of the United States, requiring the surrender of fugitives from justice, is in the nature of a treaty stipulation between the States of the Union, and it is equally binding upon each State, and all of the officers thereof for its faithful execution, as though it was a part of the constitution of each State, whether Congress had passed laws relating thereto or not."'"

(Underscoring, Court's Italics)

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CONCLUSION

Therefore, it is the opinion of this department that House Committee Substitute for House Bills Nos. 13 and 39 does not conflict with the Constitution of this State, or with the Constitution of the United States, nor the Federal Laws and statutes on extradition.

Respectfully submitted,

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APPROVED:

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GPW:A