

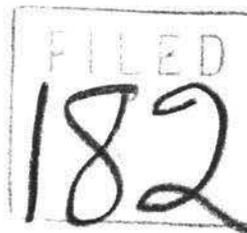
EXTRADITION:  
WRITTEN WAIVER:  
WHO MAY TAKE:

Sec. 548.260, RSMo 1959, on waiver of criminal extradition, must be signed and consented to in the presence of a judge as provided in said section and does not authorize police officers to take such waivers from the accused.

Opinion No. 182

September 12, 1962

Honorable W. H. Bates  
Secretary-Attorney  
Board of Police Commissioners  
Kansas City 6, Missouri



Dear Mr. Bates:

This office is in receipt of your request for our legal opinion, which reads as follows:

"Section 548.260, Missouri Revised Statutes, 1959, provides that any person arrested in this state and charged with having committed a crime in another state and who is alleged to have escaped from confinement or broken the terms of bail, probation or parole of another state, may waive extradition proceedings by executing in the presence of a judge of a court of record of this state a writing which states that the said person consents to return to the demanding state and further provides that the judge of such court shall inform the person of his rights in extradition or in habeas corpus. In the last half of the second paragraph of the above-mentioned section the following language is noted:

'\* \* \* provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state.'

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"This Department would like an opinion from your office, stating whether or not officers of this Department, under provisions of the above-quoted part of Section 548.260, Missouri Revised Statutes, 1959, could take a written waiver from an arrestee, showing that he consents to return voluntarily to the demanding state with the officers of the said demanding state, without going through the court of record procedures as are prescribed in the first part of Section 548.260."

The inquiry is in regard to Section 548.260, RSMo 1959, and calls for a construction of the section, particularly that part of subsection 2 of same, which we have underscored. Section 548.260, reads as follows:

"1. Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in sections 548.071 and 548.081 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance or service of a warrant of extradition and to obtain a writ of habeas corpus as provided in section 548.101.

"2. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of

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such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of this state." (Underscoring supplied).

In an effort to determine the meaning intended to be given the proviso by the lawmakers, we have examined the general rules of statutory construction, including those dealing with provisos. We find them of little or no aid in this instance of ascertaining the legislative intent.

Our legal research discloses that forty-one of the fifty states of the United States, including Missouri, have adopted those recommended forms of extradition laws known as the "Uniform Criminal Extradition Law."

Although such laws of the various states may not contain identical language in every section, and there may be modifications, additions or absences of certain provisions of lesser importance in some of them, all of said Uniform Criminal Extradition Laws contain the same basic principles and requirements on all important phases of interstate criminal extradition.

We further find that certain sections of the Uniform Criminal Extradition Laws of different states are identical in every respect. Several states have a section identical with Section 548.260, RSMo 1959, but strange as it may seem, we are unable to find a single appellate court decision of any such states (including Missouri) construing a proviso identical to that appearing in Section 548.260, Subsection 2, supra.

Legislative intent is of course the cardinal rule of statutory construction, we therefore turn to the meaning of the language used.

It is clear that Subsection 1 of Section 548.260 spells out a mandatory and exclusive method whereby a person arrested may waive the issuance and service of the warrant of arrest issued by the Governor, i.e., by signing a writing in the

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presence of a judge of a court of record in this state. Sub-section 2 continues to the effect that when such consent or waiver has been signed by the accused in the presence of the judge, it shall be sent to the Governor and the judge shall direct that the accused be turned over to the officer of the demanding state, and then commences the proviso clause "provided however that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state."

In order to give this proviso meaning it must necessarily apply to the situation where the accused is not under arrest or not in custody, as, for example, on bond or recognizance. Certainly it is not intended to mean that the right and protection given to the accused to sign the waiver in the presence of the judge is taken away by the proviso clause so as to permit anyone not a judge to take such a waiver and consent.

The meaning of the following clause in the proviso "nor shall this waiver procedure be deemed to be an exclusive procedure" is rather obscure. It either means that the procedure of waiver before the judge may be ignored by the officers and a waiver taken from the accused or it means that the rights and protections of the accused afforded by the statute must be followed in substance but minor irregularities in the procedure would not affect the validity of the waiver procedure.

We believe the latter meaning is intended because the former would tend to emasculate the safeguards set up to protect the accused. Ordinarily statutes should not be construed so as to grant a right, safeguard and protection in one portion of the statute and then by obscure implication remove or abrogate that right by a subsequent proviso clause. This should only be done when the language is clear and unambiguous compelling no other construction.

Finally, the concluding clause of the proviso "or to limit the powers, rights or duties of the officers of the demanding state or of this state," has no reference to the previously outlined procedure for waiver and consent but undoubtedly refers to officers' powers, rights and duties relating to arrest,

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custody, self-defense and the vast multitude of powers, rights or duties possessed by officers. This clause is precautionary and intended to be construed so as not to limit or abrogate any other right, power or duty possessed by officers not related to the procedure spelled out for waiver of extradition.

Moreover, if it was intended by the Legislature to authorize police officers to take waivers from accused persons, the statute should have expressly given such right. Such rights are not ordinarily granted by the Legislature by implication and to grant such a right by implication in a proviso clause is even more rare. The failure to expressly grant such right and power to police officers is deemed to be a lack of such right and power.

It appears therefore that the right and protection granted to the accused in this statute was not intended to be removed by the vague, obscure implication contained in the proviso clause and to grant to police officers at their option the right to take such waivers from the accused.

If the accused person desires to sign a written waiver of issuance and service of the Governor's extradition warrant, thereby consenting to voluntarily and without formality return to the demanding state, then the written waiver procedure provided by Section 548.260, supra, shall be followed. That procedure requires the written waiver to be executed or subscribed in the presence of a judge of any court of record in this state. This requirement is mandatory, and should be strictly followed in order to protect the rights of the accused.

Therefore, in view of the foregoing, it is our opinion that the last proviso of Section 548.260, RSMo 1959, does not authorize officers of the Board of Police Commissioners of Kansas City, Missouri, to take written waivers from accused persons, whereby they waive issuance of the Governor's extradition warrant and all incidental proceedings and consent to return voluntarily and without formality to the demanding state.

#### CONCLUSION

Therefore, it is the opinion of this office that Section 548.260, RSMo 1959, relating to written waivers of criminal extradition proceedings, must be signed and consented to in the presence

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of a judge of a court of record as provided in said section and does not authorize police officers to take such waivers from the accused.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

JGS:al:mv