

Answer by letter-Wieler

August 22, 1969

OPINION LETTER NO. 274

Mr. Howard L. McFadden
General Counsel
Department of Corrections
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. McFadden:

This is in response to your request for an official opinion from this office construing the extradition statutes of Missouri with respect to the interstate transfer of convicts for trial pursuant to an executive agreement. In your letter, you indicated that your request revolved around the following facts:

"The District Court of Washington County, Nebraska, has issued an order to the Superintendent of the Training Center for Men at Moberly to render up an inmate of that institution for trial in Nebraska, stating that the inmate shall be returned to the Training Center on completion of the trial;

"Authorities at California's Folsom Prison are holding Michael Novogradac to serve California sentences. He is an escapee from the Training Center for Men at Moberly and is wanted here both for the purpose of continuing his unfinished sentences and prosecution for the escape. Apparently, the California authorities under a California Supreme Court ruling (in re Stoliker, 49 Cal. 2d 75) are required to make such individuals available for trial and concurrent service of sentences in other states. They are prepared to release the man to the State of Missouri on the condition that he be returned to them if his

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sentences here expire prior to the termination of his California sentences."

With respect to the above facts, you ask the following questions:

"Does section 548.051 RSMo. 1959 apply in either of these cases? (assuming that the State of Nebraska makes a proper demand through its Governor on the Governor of Missouri)

"If Novogradac is at any time to be returned to the State of California, would this have to be accomplished on an extradition warrant of our Governor? In that case, would the subject be entitled to invoke the provisions of section 548.101 RSMo. 1959?

"Would Missouri correctional authorities be subject to the penalties set out in section 548.111 RSMo. 1959 if they were to deliver Novogradac into the hands of the California authorities on the termination of his time without affording him the rights under 548.101 RSMo. 1959?"

In another letter, you raised the following additional questions:

"1. If Novogradac is entitled to a habeas corpus hearing before his return to the California authorities under Section 548.101, RSMo 1959, could he effectively raise the point that he is not a fugitive in that he was transported involuntarily from California to Missouri and, therefore, is not extraditable back to California?

"2. If Missouri, pursuant to an executive agreement, transports a prisoner to another state for trial before completion of his Missouri sentence, can this prisoner later fight return to the State of Missouri upon the grounds that he was not a fugitive in that he left under legal compulsion and is, therefore, not subject to extradition?"

Section 548.051, subsection 1, RSMo 1959, provides:

"1. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under

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criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated."

It is clear then that under the terms of this statute Michael Novogradac can be extradited from California for trial in this state under the terms and conditions set forth therein.

Also, it is our view that Section 548.051, subsection 1, authorizes the return of Novogradac to California on termination of prosecution in this state pursuant to an executive agreement without the formality of a demand from the Governor of California and the issuance of a governor's warrant in response thereto. This being so, the provisions of Section 548.010 are not applicable. Section 548.101 only applies in those instances where a person is to be delivered to an agent of a demanding state under the governor's warrant of arrest issued pursuant to Section 548.071, RSMo 1959. In adopting this view, we note with approval the following language from the case of Walsh v. State ex rel. Eymann, 450 P.2d 392, 396 (Ariz. 1969):

" . . . The executive agreement between the Governors of Arizona and California was a part of the original extradition proceedings and petitioners return to Arizona pursuant to that agreement made it unnecessary to initiate new proceedings in California for purposes of returning petitioners to Arizona. Any objections to the condition in the agreement for the return of petitioners to Arizona could have been raised in the original extradition proceedings in Arizona, and it would unnecessarily encumber the extradition process to require an additional hearing in California to present a second opportunity to test the validity of the condition for petitioners return."

With respect to the other fact situation mentioned in your opinion request, it is our opinion that the Governors of Nebraska and Missouri could enter into an executive agreement whereby an inmate of the Training Center for Men at Moberly could be returned to Nebraska for trial upon the condition that he be returned to this state at the expense of Nebraska as soon as the prosecution in Nebraska was terminated. Section 29-733, Revised Statutes of Nebraska 1943

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is identical to our Section 548.051 and therefore authorizes the chief executive of the State of Nebraska to enter into executive agreements of this type. However, before reaching an executive agreement, the Governor of Nebraska must make a formal request for the extradition of the convict involved. The convict can be released to the Nebraska authorities only upon the governor's warrant of arrest issued pursuant to Section 548.071 and only after the convict has been accorded the opportunity to test the legality of the governor's warrant of arrest pursuant to Section 548.101. See *People ex rel. Lehman v. Frye*, 220 N.E.2d 235, 236-237 (Ill. 1966) wherein the Illinois Supreme Court held that a prisoner was entitled to a habeas corpus hearing before he could be taken from Illinois to Iowa for trial pursuant to an executive agreement.

Since it is our view that prisoners being returned to the state where they were initially imprisoned pursuant to an executive agreement do not come within the provisions of Section 548.101, RSMo or Section 29-738, Revised Statutes of Nebraska which is identical to Section 548.101, RSMo, it will not be necessary to discuss the questions raised in your subsequent letter.

Yours very truly,

JOHN C. DANFORTH
Attorney General