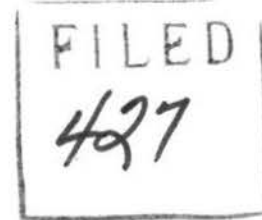


October 12, 1971

OPINION LETTER NO. 427  
Answer by letter-Wieler



Mr. Richard M. Miller, Secretary  
Board of Police Commissioners  
1200 Clark Avenue  
St. Louis, Missouri 63103

Dear Mr. Miller:

This is in response to your request for an opinion as to the rights and responsibilities of the St. Louis Police Department with respect to an extradition proceeding in which the fugitive has waived extradition from the fugitive state. Specifically, you ask:

- "1) When a prisoner is held in some other state and a warrant has been issued in St. Louis, and the prisoner wishes to waive extradition, what responsibility does the St. Louis Police Department have as to returning him to this City?
- "2) When another law enforcement agency notifies this Department directly that they are holding a fugitive from this state, and the prisoner waives extradition and signs a consent to return, are St. Louis Police Officers 'duly accredited agents' under Section 548.260 (2) for purposes of taking delivery of the prisoner in the other state?
- "3) When this Department returns a prisoner who has waived extradition, how can the expenses of return be recovered from the state?"

With respect to your first question, it is our opinion that the St. Louis Police Department has no responsibility in this matter unless and until a member of the Department has been appointed as

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the Governor's agent for the return of the fugitive to this state. Waiver of extradition by a fugitive only releases the authorities in the asylum state from the duty of issuing a Governor's warrant for the fugitive's arrest and the further responsibility of allowing an opportunity for a habeas corpus hearing in the asylum state for the purpose of determining the legality of his arrest. It does not waive the requirements of Section 548.231, RSMo 1969, calling for an application by the prosecuting attorney to the Governor of this state for the issuance of a requisition on the executive authority of the asylum state for the return of the fugitive or the requirements of Section 548.221, RSMo 1969, which places the duty on the Governor of this state to appoint an agent for the purpose of receiving the fugitive and conveying him to the proper officer of the county in this state in which the offense was committed. Although we realize that fugitives who have waived extradition have been returned to the county in the state in which they were charged with committing a crime by police officers of that county without observing the requirements of these statutes and, further, that such fugitive has no standing to complain of this action, it is our opinion, as a matter of law, that such police officials are not acting as agents of the State of Missouri and have no authority as such.

For this reason, our answer to your second question is in the negative. Section 548.260, RSMo 1969, allows the authorities in this state to deliver a fugitive to a "duly accredited agent or agents of the demanding state" without the issuance of a Governor's warrant or the granting of the right to seek habeas corpus when the fugitive has formally waived such requirements. Similar provisions are contained in the laws of all states which have adopted the Uniform Criminal Extradition Act. As can be seen from the statutes, the only way to become an agent of this state for the purpose of returning a fugitive to this state is to be appointed to such position by the Governor under the provisions of Section 548.221.

In response to your third question, it is our opinion that the expense of returning a fugitive to this state can be paid out of the state treasury only where the person incurring the expenses is the named agent of the Governor under the provisions of Section 548.221. Section 548.241, RSMo 1969, specifically provides:

"1. Except as in this section otherwise provided, all expenses accruing under section 548.221 upon being ascertained to the satisfaction of the governor, shall be allowed on his certificate and paid out of the state treasury as other demands against the state.

"2. Expenses incident to the extradition of any person charged with violating section 559.350, RSMo, shall be paid by the county in which

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the offense is alleged to have been committed. Application for the payment of the expenses shall be made by the agent designated by the governor and filed in the office of the county clerk or of the comptroller of the city of St. Louis. The application shall state the name of the accused and the time, place and pertinent facts of the alleged offense and shall include an itemized statement of the necessary and actual expenses incurred in the extradition of the person and shall be signed and verified by the applicant. The county court or the comptroller of the city of St. Louis, if the application and statement are found correct, shall issue appropriate warrants for the payment of the expenses out of the county or city treasury."

Yours very truly,

JOHN C. DANFORTH  
Attorney General