INTERSTATE COMPACTS:
EXTRADITIONS:
PROBATIONERS AND PAROLEES:
"STATES" AND "TERRITORIES:"

The grant of authority under Sec. 549.310 RSMo 1949, to enter into compacts and agreements with other states for the supervision of parolees and probationers does not include authority by the Governor to enter into such compacts and agreements with Hawaii and Puerto Rico.

August 29, 1957

Honorable Lewis M. Means
Chairman, Board of Probation
and Parole
State of Missouri
Jefferson City, Missouri

Dear General Means:

This will acknowledge receipt of your opinion request of July 18, 1957, which opinion request reads as follows:

> "We have recently received a letter from Mr. B. E. Crihfield, for the Secretariat of the Parole and Probation Compact Administrators' Association of the Council of State Governments, informing us that Puerto Rico has ratified the Interstate Compact for the supervision of Parolees and Probationers, under authority of Public Law 970. This law defines the word 'states' to include Puerto Rico for purposes of Congressional Consent to interstate compacts for the control of crime.
>
> "A blank execution page, which we are enclosing, was sent with his letter.
>
> "Mr. Crihfield has asked that we ascertain whether or not you have defined the word 'states' to include Puerto Rico for purposes of the Compact. Would you, therefore, give us an official opinion in regard to this matter, and if the opinion is affirmative, have the enclosed execution page signed by the Governor and the Secretary of State.
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> "The Secretariat has asked us to return the execution page to them if we cannot participate with Puerto Rico."

A companion opinion request received a few days after the one

set out above, and involving the same question of law with reference to Hawaii, which has also ratified the compact, will be ruled on in this opinion.

The various statutes involved will be set forth herein in chronological order.

In 1934 the Congress passed Section 111, Title 4 of the United States Code for the purpose of granting consent (Art. 1, Sec. 10, Clause 3 of the Constitution of the United States prohibits the states from entering into agreements and compacts with each other without the consent of Congress) and permission to states to enter into compacts and agreements with other states toward the prevention of crime and enforcement of criminal laws and policies. Said section, at that time, read as follows:

> "(a) The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts."

Then, in 1945, the General Assembly of Missouri, pursuant to the provisions of the above quoted act of Congress, passed Section 549.310, RSMo 1949, which reads as follows:

> "The governor is hereby authorized and directed to enter into a compact on behalf of the state of Missouri with any and all other states of the United States legally joining therein and pursuant to the provisions of an act of Congress of the United States of America granting the consent of congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes, which compact shall have as its objective the permitting of persons placed on probation or released on parole to reside in any other state signatory to the compact assuming the duties of visitation and supervision over such probationers and parolees; permitting the extradition and transportation without interference of prisoners, being re-taken, through any and all states signatory to said compact under such terms, conditions, rules and regulations, and for such duration as in the opinion of the governor of this

state shall be necessary and proper."

Between the effective date of Section 549.310, supra, and the present time, compacts have been entered into between this state and most of the other forty-seven states of the United States.

Next, in August, 1956, the Congress amended Section 111, supra, by adding paragraph (b) thereto and the section now reads:

> "(a) The consent of Congress is hereby given to any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts.
>
> "(b) For the purpose of this section, the term 'States' means the several states and Alaska, Hawaii, the Commonwealth of Puerto Rico, and Virgin Islands, and the District of Columbia. May 24, 1949, c. 139 §129(B) 63 Stat. 107, amended August 3, 1956, c. 941, 70 Stat. 1020."

It was the amendment to Section 111, supra, and the ratification of the compact by Hawaii and Peurto Rico which gave rise to the question in the opinion request, to-wit: did the General Assembly of Missouri, when it passed Section 549.310, supra, authorizing and directing the Governor to enter into a compact between this state and any and all other states of the United States--pursuant to the provisions of an act of Congress(Title 4, Sec. 111) intend that the words "any and all other states of the United States" include territories, such as Hawaii and Puerto Rico, of the United States.

It should be noted that Section 549.310, supra, was passed before Section 111, supra, was amended so as to include territories within the meaning of the term "states."

As hereinbefore indicated, we believe that the question at hand is to be resolved from a determination of what the General Assembly of this state intended when it authorized and directed the Governor to enter into compacts between this state and "any and all other states of the United States." That, by amendment of Section 111, supra, the term "states" now includes territories of the United States, does not, ipso facto, extend or broaden the original meaning ascribed by the General Assembly of this state to the words "any and all other states

of the United States," for there is no provision in Section 549.310, supra, that the said section is to be interpreted or amended in accordance with subsequent action by the Congress with respect to Section 111, supra. And that the Congress may have intended, although it is somewhat doubtful, in view of the fact that the amendment was for the purpose of defining, expressly, the meaning of the term "states," that the term "states" as used in Section 111, supra, before it was amended, include the territories of the United States within its meaning, is not determinative here, unless the General Assembly of this state intended "any and all other states of the United States" to be consistent in meaning with that ascribed by the Congress to the term "states." These points will be discussed briefly later on in this opinion.

No cases have been found where the words "with any and all other states of the United States," have been defined by the courts. There are many cases, however, where the term "states" has been defined. (Although the term "states" is not synonomous with the words "with any and all other states of the United States," it is believed, for the reason appearing hereinafter, that the latter words are more restrictive in meaning as to whether or not they include territories than is the term "states," and that, consequently, if the term "states" does not include territories then neither would the words in question.) In some cases the meaning can be determined from the particular statute or statutes wherein the term "states" appears, and in many of such cases the said term has been defined as including territories of the United States within its meaning. In other cases where it is not clear from the context as to the meaning of said term, the courts have relied on the common and ordinary understanding of what it ("states") means.

If the common and ordinary meaning of the term "states" is used as a basis for determining what the intention of the General Assembly was, then the only conclusion which can be reached is that the General Assembly did not intend that territories be included within the meaning of the words used in the statute (Section 549.310, supra).

In regard to this matter see the case of Ex Parte Morgan, 20 Fed. 298, in which case the court defined the term "states" as follows: l.c. 304:

> "It means one of the commonwealths or political bodies of the American Union, and which, under the constitution, stand in certain specified relations to the national government, and are invested as commonwealths with full power, in their several spheres, over all matters not expressly inhibited. * * * *"

The court in the same case,(Ex Parte Morgan, supra,)also defined territory in the following language, at l.c. 305:

> "* * * *A territory, under the constitution and laws of the United States, is an inchoate state, --a portion of the country not included within the limits of any state, and not yet admitted as a state into the Union but organized under the laws of congress, with a separate legislature, under a territorial governor and other officers appointed by the president and senate of the United States."

In comparing the definitions of the two terms, states and territories, it is immediately apparent that the definition of states does not include territories. Note that, whereas "state" was defined as one of the commonwealths or political bodies of the American Union, "territory" was defined as a portion of the country not yet admitted into the Union. And where it was stated that the state has full power over all matters not expressly inhibited, the same court defined the territory as being organized under the laws of Congress, under a territorial governor, and other officers appointed by the President, and the Senate of the United States.

We do not mean to determine the intention of the General Assembly from the commonly understood meaning of the words in question, alone, and without regard to the context wherein they were used.

After examining the context(Section 549.310, supra) wherein the words were used, and the related statute, Section 111, supra, we are unable to hold that the General Assembly of this state intended the words, "with any and all other states of the United States" to include territories of the United States. There are several reasons for such.

First, it is noted that the General Assembly of this state used the words "with any and all other states of the United States" and did not follow the wording "two or more states," as used in Section 111, supra. As hereinbefore indicated, it is believed that the words used by the General Assembly of this state are more restrictive in meaning. Whereas the words "two or more states" might in some instances include territories within their meaning, when the General Assembly of this state added the words "of the United States," it appears that the meaning was restricted. Although Puerto Rico or Hawaii may be a state in the sense that the term "state" is used in a particular statute, they are not united with the other states of the United States. In other words, the General Assembly of this state seemed to qualify the meaning to be ascribed to the words used by the addition of the words "of the United States."

Secondly, insofar as the General Assembly of this state may have intended that the words used in Section 549.310 be consistent in meaning with those in Section 111, supra, it is noted that the Congress amended Section 111 in 1956, so that the term "states" now includes, expressly, territories within its meaning. If the Congress intended in Section 111, supra, as originally enacted, that the term "states" include territories within its meaning, and the reason for such amendment was to clarify this intended meaning, then this fact in itself, indicates that the legislatures of the various states have not construed and understood the term "states" to mean what it (the Congress) had intended. If, on the other hand, the reason for such amendment was because the term "states" did not include territories within its meaning when Section 111, supra, was originally enacted, then such would limit the meaning of the words in Section 549.310, supra, for the statute of Missouri could not be broader than the federal statute, inasmuch as consent is required of Congress by the states to enter into compacts and agreements between other states.

Although it is not absolutely clear as to the reason for the amendment of Section 111, supra, it appears that the later reason discussed above is the explanation of the amendment.

In a case involving a question as to what the Congress intended when it used the word "state" the court, in United States v. Helpley, 125 Fed. 616, stated, l.c. 619:

> "While the word 'state' has sometimes been construed to include the territories and the District of Columbia * * * still Congress surely may be assumed to have known that the word 'state' had often been held not to include the territories or the District of Columbia and if we give that body, which always numbers many able members of the legal profession among its members, credit for such knowledge, we cannot say with certainty that it intended the word 'state' to mean territory or District of Columbia."

In view of the foregoing it is concluded that the term "states" or the words, "with any and all other states of the United States" do not, unless it appears otherwise from the context, include territories within their meaning. It is further concluded, for the reasons pointed out, that there is nothing in the context which clearly indicates that the General Assembly of this state intended that territories be included within the meaning of the words used

Honorable Lewis M. Means

therein.

CONCLUSION

It is, therefore, the opinion of this office that the grant of authority under Section 549.310, RSMo 1949, to enter into compacts and agreements with other states for the supervision of parolees and probationers does not include authority by the Governor to enter into such compacts and agreements with Hawaii and Puerto Rico.

The foregoing opinion, which I hereby approve, was prepared by my assistant Mr. Harold L. Henry.

Yours very truly,

John M. Dalton
Attorney General

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