PAROLE:
CRIMINAL LAW:
INTERSTATE COMPACT:

Authorities of State of Florida may retake parolee in this state under interstate compact for violations committed subsequent to this state becoming a signatory to said compact.

August 2, 1947

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Board of Probation and Parole
State of Missouri
Jefferson City, Missouri

Attention: Mr. Donald W. Bunker
Executive Secretary

Gentlemen:

This will acknowledge receipt of your request for an official opinion which for sake of brevity we are restating.

As we understand the facts in your request, Rose Lair was convicted of robbery with a dangerous and deadly weapon in the State of Florida, and on March 10, 1941, was sentenced to serve 10 years in the state penitentiary at Raiford, Florida. Thereafter, on May 13, 1942, she was released on parole by the Florida authorities and the Missouri Board of Probation and Parole accepted supervision of said parolee. She was to remain on parole until March 10, 1951. Thereafter, on several occasions, she violated the terms of her parole and the Board of Probation and Parole reported such violations to the Florida authorities and recommended revocation of said parole and her return to Florida. Thereupon, she filed a petition for writ of habeas corpus in the Court of Criminal Corrections, Division No. 2, City of St. Louis, Missouri, and that court sustained said writ in December, 1946, whereupon she was advised by her counsel that she should continue to report to your St. Louis office in accordance with the parole regulations; but she has repeatedly refused and has not, as of the date of your request, reported to said office although she is in St. Louis, Missouri.

You now inquire if under the compact, for such violations of the parole and regulations of your board, subsequent to Missouri becoming a signatory state and upon your notifying the proper authorities in the State of Florida, which likewise is a signatory to said compact, may the proper accredited officers of the State of Florida enter Missouri and re-take said parolee without any formalities other than establishing their authority and the identity of the parolee.

The 73rd Congress, Second Session, on June 6, 1934, enacted Public Law No. 293, 48 Stats. 909, 18 U.S.C.A. 7,

Section 420, wherein Congress gave its consent to two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime, which act, the basis for this state entering into a compact, is authorized under Section 46, page 737, Laws of Missouri 1945. Said Section 420 reads:

> "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."

Under Section 46, page 737, Laws of Missouri 1945, the 63rd General Assembly authorized the Governor of this state to enter into a compact with other states pursuant to the foregoing act of Congress consenting to such compacts, which reads:

> "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 the 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."

Thereafter, on April 3, 1947, in conformity with Section 46, supra, the Governor of this state entered into a compact with all other signatories of said compact. The compact executed by Governor Phil M. Donnelly is the uniform type executed by all other states a party thereto. It specifically provides under Section 6 thereof that said compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing; that when executed, it shall have the full force and effect of laws within such states.

Section 3 of said compact further authorizes any accredited officers of a sending state at any time to enter and re-take any person on probation or parole without the necessity of extradition proceedings. Furthermore, the decision of the sending state that to re-take a parolee is conclusive. Section 3 reads:

> "That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: Provided, however, That if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such a state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense."

Such compacts as executed by the Governor of this state have been held constitutional on most all grounds imaginable.

See Ex Parte Tenner, 128 P. (2d) 338, l.c. 341, 342, 343, wherein the court said:

> "The administration of parole is an integral part of criminal justice, having as its object the rehabilitation of those convicted of crime and the protection of the community. Unquestionably such rehabilitation of a parolee may often be facilitated by transferring him to another state, with new surroundings and better opportunities for employment. It is apparent, however, that the success of such out-of-state transfers requires adequate control and intelligent supervision of parolees during the period of their readjustment to civil life. And from the standpoint of the protection of society, there is sound reason for an agreement between states that the authority over parolees should follow them across state lines. The knowledge on the part of the out-of-state parolee that he may summarily be returned to prison for any violation of the rules which he has agreed to obey undoubtedly is an effective check upon any inclination to violate parole.
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> "The compact represents the social policy of both California and Washington in this regard. It is an agreement for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of the criminal laws of each state within the contemplation of the federal legislation and therefore does not violate the prohibition of the Constitution concerning compacts between states.
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> "Nor does the act of the respondent deprive the petitioner of his liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution. He had his day in court when he was tried and convicted of a felony and sentenced to a maximum term of five years in the Washington State Penitentiary. The parole which he accepted was granted upon the express condition that the Board of Prison

Terms and Paroles 'may at any time within its discretion and without notice cause the parolee to be returned to the said institution to serve the full maximum sentence or any part thereof.' One convicted of crime has the right to reject an offer of parole, but once having elected to accept parole, the parolee is bound by the express terms of his conditional release. In re Peterson, 14 Cal. 2d 82, 92 P. 2d 890.

"The most serious question presented by the petitioner is his contention that article IV, section 2, clause 2, of the United States Constitution providing for the extradition of criminals and the act of Congress carrying that constitutional provision into effect constitute the sole method by which a parolee whose parole has been revoked may be returned to the state in which he was convicted. The Constitution provides:"

* * * * * * * * * * * * * * *

"Except for section 2 of article IV of the Constitution, there would be no question concerning the right of states to provide, by their joint agreement, for the return of a certain class of fugitives, subject, of course, to the constitutional provision regarding interstate compacts, * * *"

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"The existence of an independent method of securing the return of out-of-state parolees does not conflict with nor render ineffectual the federal laws with relation to extradition. The federal method of extradition is always present and may be invoked when necessary to secure the right to return of the fugitive to the demanding state. Also states not party to the interstate compact are free to invoke that procedure to secure the return of fugitive parolees. And if a state has elected to

> follow the federal procedure and claim the constitutional guarantee, the fugitive of course has the right to insist, on habeas corpus, that the procedure conform to the federal law. Similarly the parolee detained under the interstate compact has the right to complain, by means of habeas corpus, if that law is not complied with by the authorities. But no right exists on the part of the parolee, whose parole has been revoked, to claim that he may only be removed by the method of his choosing. And since the statute applies uniformly to all parolees from states party to the compact, the petitioner may not complain that the statute deprives him of the equal protection of the laws. (See cases cited.) * * * "

Therefore, it appears that the only question now to be determined, since you specifically state the parolee has positively violated the conditions of her parole subsequent to this state executing the foregoing compact and the State of Florida revoking said parole and re-taking said parolee, does the taking of said Rose Lair by virtue of said compact executed under and by virtue of Section 46, page 737, Laws of Missouri 1945, and the act of Congress consenting to such action by the Legislature as heretofore referred to, amount to said compact and law operating retrospectively. And if such be the case, can said parolee be re-taken by the proper officials of the State of Florida without extradition proceedings.

Under Article I, Section 13 of the Constitution of Missouri 1945, the General Assembly is prohibited from enacting ex post facto laws and said amendments prohibit the passage of any law impairing obligations of contracts, or retrospective in operation, or making any irrevocable grant of special privileges or immunities. Said amendment reads;

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

Retroactive and retrospective have been regarded as synonymous. In Graham Paper Company vs. Gehner, 59 S.W. (2d) 49, l.c. 50, the Supreme Court of Missouri, en banc, defined

said words in the following manner:

> "The plaintiff bases its contention on the literal reading of the amended statute which provides that there shall be levied and collected 'for the calendar year 1927'--all of it--an income tax of 1 per cent. on only the proportional amount of the total income derived from business done within this state, and so the statute reads. To this the defendants reply that such amended statute did not go into effect till July 3, 1927, and therefore could not work any change in the income tax law as to the basis or mode of computing the tax till after that date, and that to hold otherwise and in accordance with plaintiff's contention, the amendment is 'retrospective in its operation' and in contravention of section 15, article 2, of our Constitution.
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> "Defendants are clearly correct. A new or an amendment of an existing statute which reaches back and creates a new or different obligation, duty, or burden which did not exist before the new law itself became effective, or which makes the obligation or burden begin at a date earlier than the date of going into effect of the law itself, is retroactive in its operation and unconstitutional. A law is retroactive in its operation when it looks or acts backward from its effective date, and if it has the same effect as to past transactions or considerations as to future ones, then it is retrospective. Leete v. State Bank, 115 Mo. 184, 198, 21 S.W. 788.
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> "In Bartlett v. Ball, 142 Mo. 28, 36, 43 S.W. 783, 785, this court said: 'Nor is it to be forgotten that retrospective laws are forbidden, eo nomine, by our state constitution; and when this is the case it is <u>immaterial</u> whether or not the act <u>interferes with vested rights</u>. Cooley, Const. Lim. (6th Ed.) pp. 454, 455; Black, Const. Law, par. 197, p. 543. There is nothing,

however, in the section which gives indication of other than prospective operation. If it did, it would contravene the constitution. * * * But it is not thought that the section under consideration was intended to affect, obstruct or defeat the inchoate dower right of a wife, or such right when it becomes absolute in a widow by reason of her husband's death.' This statement of the law is approved in Bartlett v. Tinsley, 175 Mo. 319, 332, 75 S.W. 143.

"Much this same question came before this court in Smith v. Dirckx, 283 Mo. 188, 198, 223 S.W. 104, 106, 11 A.L.R. 510. In that case the Legislature of 1919, Laws 1919, p. 718, amended the then existing income tax law so as to increase the rate from one-half of 1 per cent. to 1½ per cent. and made the same applicable to the entire year of 1919, beginning January 1st, though the amended law did not go into effect till August 7, 1919, being ninety days after the adjournment of that Legislature. This court there held that this legislative act attempting to increase the rate of taxation so as to cover a period prior to the date the law itself went into effect was plainly retroactive in its operation and the increased rate could not apply to that portion of the year 1919 prior to its effective date, though the act plainly specified that it should be applied to the entire year 1919. This court, after quoting with approval the definition of 'retrospective laws' given in Reed v. Swan, 133 Mo. 100, 108, 34 S.W. 483, said: 'Applying the above definition to so much of the amendment of 1919 as undertook to assess an additional 1 per cent. upon that portion of the net income for the calendar year of 1919, which was received by appellant prior to the going into effect of said amendment, we are clearly of the opinion that it "did create a new obligation or impose a new duty" in regard thereto, and that the amendment does to that extent operate retrospectively, and is in violation

> of the above-mentioned constitutional inhibition against retrospective laws.' It was, therefore, held that the income tax for 1919 then in controversy should be computed under the old law for the portion of the year 1919 prior to the date the amendment of 1919 went into effect and under the amended law for the remainder of that year."

Also in Wilson vs. New Mexico Lumber & Timber Company, 81 P. (2d) 61, l.c. 62, the court said:

> "In order for claimant to come under the amended act, said act would have to receive a retroactive construction.
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> "'As applied to statutes the words "retroactive" and "retrospective" may be regarded as synonymous and may broadly be defined as having reference to a state of things existing before the act in question. A retrospective law may be defined more specifically as one "which is made to affect acts or transactions occurring before it came into effect, or rights already accrued, and which imparts to them characteristics, or ascribes to them effects, which were not inherent in their nature in the contemplation of the law as it stood at the time of their occurrence." Black on Interpretataion of Laws, 247.' Ashley v. Brown, 198 N.C. 369, 151 S.E. 725, 727."

By the very terms of the compact executed by the Governor of this state providing that said compact shall become operative immediately upon its execution and furthermore, Section 46, supra, nowhere indicating said act or compact shall act retroactively, unquestionably it must have been the intention of the Legislature and the Governor for said compact to act prospectively. In all probability, had the authorities in Florida attempted to re-take said parolee for violations committed prior to this state becoming a party to said compact, it would have been considered acting retrospectively; however, since both states, Florida and Missouri, are now signatories of said compact and said parolee has violated the conditions

of her parole subsequent thereto, certainly the authorities of the State of Florida by reason of such subsequent violations may re-take said parolee.

CONCLUSION

Therefore, it is the opinion of this department that the compact executed by the Governor of this state on April 3, 1947, is valid and constitutional and for violations committed by Rose Lair, a parolee from the State of Florida, subsequent to Missouri becoming a signatory to said compact, the authorities of the State of Florida, upon revocation of said parole, may enter this state and re-take parolee by merely showing authority of the officer and identifying said parolee to be taken as provided in the compact to which both states are parties thereto.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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