Inter-state Compacts: House Bill 459 not in conflict with Constitution of Missouri and United States.

H-23

April 20, 1937

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Honorable Francis Smith
Representative
59th General Assembly
Jefferson City, Missouri

Dear Mr. Smith:

We acknowledge your request for an opinion under date of April 13, 1937, wherein you state as follows:

> "Enclosed herewith is a perfected copy of House Bill Number 459 introduced by myself at the request of the Missouri Bar Association.
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> "The wording of this Act was patterned after a similar law now on the Statute Books of the State of Kansas.
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> "I would appreciate your office giving me an opinion as to the constitutionality and practicability of this Act. Points which have been questioned are - 1. constitutionality of the bill. I would think in view of the Federal Statute that this objection is not well put. 2. whether the power conferred upon the Governor by the bill can be constitutionally delegated to him- in view of the fact that he exercises similar powers in extradition and other matters, and in view of the principle of law that powers may be delegated to a ministerial officer

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"if those powers are outlined and defined by the Legislative body, it would seem that this objection also is not tenable.

"In requesting your opinion I have mentioned the foregoing to illustrate what sort of objections have been made, whether or not in good faith by opponents of the bill.

"In view of the fact that this session is in its last stages, I should very greatly appreciate a response as soon as possible in this matter."

House Bill No. 459 (perfected) (59th General Assembly) provides that

"AN ACT

"To authorize the Governor of the State of Missouri to enter into reciprocal agreements with the officials of other states relating to the recognition by this state and the validity in this state of subpoenas, court orders and summons issued by the authority of other states; providing for compensation and immunities for anyone so summoned; relating to privileges to be accorded to peace officers of other states; providing for the issuance of proclamation by the Governor on the acceptance of such reciprocal agreements by other states.

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. The Governor of the State of Missouri shall be empowered to enter

into reciprocal agreements with other states under authority of the Act of Congress of the U. S. of June 6, 1934 (48 Stat.909; U. S. C. A. 18, Sec. 420) relating to reciprocal agreements by the states for the prevention of crime in order that this state may join with such other states for the co-operative effort and mutual assistance in the prevention of crime and in the enforcement of the respective criminal laws and policies of the respective states.

"Section 2. Such agreements shall provide that if on the trial in another state of one charged with a crime there committed, a person within this state is wanted by either party by a witness at such trial, this state, its courts and court officials, will recognize as valid any subpoena, summons or court order issued or made in accordance with the law of the state where the trial is to be had, for the appearance of the person in this state as a witness at such trial the same as though such subpoena, summons, or court order had been duly issued or made by a court of this state for the person to appear as a witness at a trial in this state: PROVIDED, A resident of this state so asked to go as a witness to another state shall not be required to do so until there is paid to him a sum equal to five dollars per day for the time he necessarily would be gone from home and ten cents for each mile by the ordinarily traveled route to and from the place where he is to testify: AND PROVIDED FURTHER, That he be immune from the service of civil or criminal process upon him while enroute to and from the place where he is to testify as to all matters occurring prior thereto.

AND PROVIDED STILL FURTHER, This proposal has been accepted by the state in which the trial is to be had and that state has granted similar rights to this state to subpoena or order the appearance as a witness at a trial in this state of a person in such other state.

"Section 3. Such agreements shall provide that if an officer of another state, in conformity with a valid writ, order of court, or statute of that state, brings a person charged with or convicted of crime in that state into or through this state, his rights to the custody of such person and to use the state penal institutions or county jails for the temporary lodging of such person shall be recognized by this state, its courts and court officials, astthough the person were in custody of a sheriff or a proper officer of this state, in conformity with a writ, order of court, or statute of this state: PROVIDED, This proposal has been accepted by such other state and that state has granted similar rights and privileges to officers of this state.

"Section 4. Such proposals, when accepted by any state, shall be liberally construed with the view of promoting their obvious purposes, and to that end technicalities not affecting substantial rights shall be disregarded.

"Section 5. The Governor of the State of Missouri is hereby made the agent and representative of the state to negotiate with the proper officials of the several states of the Union for the acceptance of these proposals, and he hereby is specifically authorized to conduct such negotiations for and on behalf of this state, and to execute on behalf of this state agreements or compacts with any or all of the other states of the Union putting into effect any or all of such proposals. The Governor shall preserve in his office a record of such negotiations, and when an agreement or compact is entered into with another state he shall issue a proclamation to that effect and cause the same to be published, and the agreement or compact shall thenceforth be in force as proclaimed."

48 Stat. 909, U. S. C. A. 18, Section 420, provides as follows:

"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."

Gordon Dean of the Department of Justice, Washington, D. C., in an address delivered at the Attorney General's conference on crime held in Washington, D. C. on December 10-13, 1934, makes the following statement with respect to Interstate Compacts for Crime Control (21 American Bar Association Journal, 89):

> "This constitutional provision made compacts possible. Its wording is interesting, because it is phrased in the negative. Specifically, it provides that no compacts might be entered into without the consent of congress. In practice, the states, therefore, have either worked out the general outline for such a compact, secured congressional approval in advance and then, in turn, secured its enactment into law by the legislatures of the states concerned, or the procedure has been reversed- the state legislatures first enacting laws establishing the terms of the compact and then securing congressional approval later.
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> "Surprising as it may seem, however, little attention has been paid to the compact clause of the Constitution, and the compact device has consequently been availed of in a comparatively rare number of instances.
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> "About seventy compacts in all have been approved by congress. These concern such matters as taxation, control of navigation, utility regulation, conservation of natural resources, and boundaries. Only eight compacts have been approved by Congress in the crime field, and all of these have been restricted to the narrow field of the service of process on, or the jurisdiction over, boundary waters.

"A typical compact of this type is that entered into between the states of Mississippi and Arkansas."* * *

"When it was suggested by some that there was no reason why the laws of both states should not be made effective over the entire river, even when such laws conflicted, others pointed to the territorial boundary which seemed, according to traditional boundary concepts, an insurmountable barrier to concurrent jurisdiction. It soon became quite evident that cooperative effort on the part of both states was needed. Mississippi and Arkansas therefore entered into a compact, which literally, at least for the purpose of enforcing the laws of the respective states, extended the western boundary of Mississippi to the western shore of the Mississippi River and the eastern boundary of Arkansas to the eastern shore of the same river.

"Until 1934, when Congress began consideration of the so-called Interstate Compact Bill, which later became law, public attention had never been focused on the possibilities of the compact device. This law gave a blanket congressional consent in advance to all compacts entered into by any two or more states in the field of the 'prevention of crime and the enforcement of their respective criminal laws and policies'."

The above statement of Gordon Dean is set out for the purpose of demonstrating the use that has been made of interstate compacts in crime and other fields.

In the case of State v. Cunningham, 59 So.76, a compact was made between the states of Mississippi and Arkansas extending the criminal jurisdiction of Mississippi to the banks of the Mississippi River on the Arkansas side, and agreeing that the two states should have concurrent jurisdiction over such river. The court said:

> "States are sovereigns may enter into any compact or agreement they see fit with each other except as prohibited by section 10 of article 1 of the Constitution of the United States. This section provides that "no state shall, without the consent of Congress, enter into any agreement or compact with another state," etc. * * *
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> "The question here is solely as to the power of the states, under the resolution, to enter into this compact or agreement. * * *
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> "The exercise of concurrent criminal jurisdiction over the waters which form the boundaries of states, even to the very borders of each state, is not new to the law or to congressional legislation. It seems to be favored and not opposed by Congress, and, in creating territories and states, it has been voluntarily inserted in the creating acts of Congress and forced upon many states. When the territories of Washington and Oregon were organized, concurrent jurisdiction was given to each over all offenses committed on the Columbia River where said river forms a common boundary. See Act March 2, 1853, c.90, 10 U.S.Stat. 172; 11 U. S. Stat. 383. The same is true of the states of

> "Minnesota and Wisconsin (Act Aug.6, 1846, c.89, 9 U.S.Stat.57); the same of Iowa and Illinois (Act March 3, 1845, c.48, 5 U. S. Stat. 742), and Kentucky and Missouri. * * *
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> "We think that the case of Central Railroad Co. v. Jersey City, 209 U.S.473, 28 Sup. Ct. 592, 52 L.Ed.896, is conclusive of the proposition that states having a river forming a common boundary may, with the consent of Congress, fix the jurisdiction to be exercised over the waters from one state to the very borders of the other, irrespective of the boundary line between the two states for other purposes. If one state may grant to another exclusive jurisdiction over the waters to its banks for any purpose, when Congress consents, we cannot understand why the same states may not grant to each other concurrent jurisdiction each to the banks of the other over offenses committed on the waters which may constitute a violation of the laws of the state undertaking the prosecution, whether such offense be malum prohibition or malum se."

If, as it has been held (Central Railroad Company, supra), that states may by compact grant to each other exclusive jurisdiction over the water to its banks for any purpose, we see no reason why same cannot be extended from one border of the state to the other.

The court, in the case of La Plata River & Cherry Creek Ditch Co. v. Hinderlider, 25 Pac. (2d) 187, l.c.188, points out, however, that the compact must not violate Federal or State Constitutions, thus:

> "No state shall, without the consent of Congress, * * * enter into any agreement or compact, with another state. * * * Article 1, Sec. 10, par. 2, U. S. Constitution.
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> "Conceding for the purposes of thisbcase that this negative implies an affirmative, it falls far short of a grant of power to any state, with the consent of Congress, to enter into a compact violating Federal or State Constitutions."

In the case of the City of New York v. Wilcox, 189 N.Y. Sup. 724, l.c.726, the compact was designed to prevent congestion at the port of New York and New Jersey by means of a joint port commission, the court, in holding that subject to the approval of Congress, any two states could enter into a joint adventure to promote the welfare of their citizens, said:

> "It is well established that subject to the approval of Congress any two states may enter into a joint adventure to promote the common welfare of their citizens. Such an agreement was entered into between New York and New Jersey in regard to Palisades Park, which lies upon the borders of the two states. The same states have another agreement as to the construction of a vehicular tunner connecting the two states. In such cases it is not necessary or permissible to limit or surrender the sovereign rights of the people, but where such rights are properly peeserved no question can be raised as to the validity of the compact."

That a compact between the State of Missouri and other states relating to the recognition of subpoenas, court orders and summonses issued by the authority of the respective states, would promote the welfare of the citizens cannot be challenged when we consider that twentieth century crime is no longer confined to intra-state activities. Furthermore, the sovereign rights of the people are not being surrendered inasmuch as the Act provides for compensation and immunity for any one summoned. Nor is the subject of compacts new to this state.

In the case of State v. Joslin, 227 Pac.543, l.c. 544, and agreement by the states of Kansas and Missouri that a waterworks plant in Kansas City, Missouri, situated in Kansas City, Kansas, adjoining a similar plant of the latter city, the two plants being capable of use, and being in fact to some extent used in co-operation, each supplementing the other in certain instances, was held free from assessment and taxation by the other state, and a valid agreement. The court said:

> "By the action referred to the Kansas Legislature has in effect declared that upon the grounds indicated the exemption of the waterworks plant in Wyandotte County owned by the City of Kansas City, Mo., is of peculiar public benefit. This decision of the Legislature, having been made in the exercise of its proper functions and being based upon grounds that the court cannot pronounce to be capricious or without foundation in reason, is beyond judicial interference.
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> "The federal Constitution (article 1, sec. 10, par. 3) by forbidding states to enter into any agreement or compact with each other without the consent

of Congress recognized their power to do so with that consent. Poole v. Fleeger, 36 U.S. (11 Pet.) 185, 209, 9 L.Ed.680. Moreover, some contracts or business arrangements between states may be effected without congressional consent. Virginia v. Tennessee, 148 U.S. 503, 518, 13 Sup. Ct. 728, 37 L.Ed.537. 'The terms 'compacts' and 'agreements', as used in this section, cover all stipulations affecting the conduct or claims of state, whether verbal or written, formal or informal, positive or implied, with each other'. (Annotated Constitution published by authority of United States Senate, p.365) not forbidden by the Constitution, for even with the consent of Congress the states may not disobey its injunctions-- may not, for instance, do any of the things prohibited by the first paragraph of the section cited (In re Rahrer, 140 U.S.545, 560, 11 Sup.Ct. 865, 35 L.Ed.572), such as entering into a treaty, alliance, or confederation. It has been said that the clause 'compacts and agreements,' as distinguished from 'treaty, alliance or confederation,' may 'very properly apply to such as regarded what might be deemed mere private rights of sovereignty; such as questions of boundary; interests in land situate in the territory of each other, and other internal regulations for the mutual comfort and convenience of states bordering on each other.' (Quoted from Story's Commentaries on the Constitution, Sec. 1403, in Virginia v. Tennessee, 148 U. S. 503, 519, 13 Sup. Ct. 728, 37 L.Ed.537) There is nothing in the subject matter of the arrangement here under consideration which because of any inhibition of the federal Constitution removed it from the category of permissible agreements or compacts."

Sec. 2 of Article 2 of the Missouri Constitution of Missouri provides that the people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof.

> "That the people of this State have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness: Provided, Such change be not repugnant to the Constitution of the United States."

As we have pointed out, the Federal government has given blanket approval in advance towards the interstate compact where no boundary line of states would be recognized, as far as it related to subpoenas of witnesses. The State of Missouri having the right to regulate the internal government and police thereof, the authorization of the Legislature of such a compact would not violate the above Constitutional provision.

Section 30 of Article 2 of the Missouri Constitution provides:

> "That no person shall be deprived of life, liberty or property without due process of law."

In the case of Ivie v. Bailey, 5 S.W. (2d) 50, l.c. 54, 319 Mo. 474, the court, in construing the 'due process clause of the Constitution', said:

> "Nor do the statutory sections violate the due process provisions of either the state or the federal Constitution. By due process of law, defined in terms of the equal protection of the law, means, in each particular case, such an exercise of the powers of government as the settled maxims and rules of procedure sanction, and such safeguards for the protection of individual rights as those maxims and rules prescribe for the class of cases to which the one in question belongs. It means, in short, the law of the land."

All safeguards for the protection of individual rights have been provided for in this Act, and therefore cannot be said to be a violation of the 'due process clause' of the Constitution.

It is to be noted that provision is made in Sec. 3 of the above Act that where an officer of another state, in conformity with a valid writ, brings a person charged with or convicted of a crime, in or through this state, he may use our state penal institutions or county jails for the temporary lodging of such person.

No provision is made for feeding such prisoners, and we have been unable to find any Constitutional or statutory provision which would prohibit the operation of Sec. 3, supra. As a matter of fact, we understand that although there is no provision for same at the present time, many penal officers of our state have been

co-operating with the penal officers of other states in temporarily housing persons charged with or convicted of crime, when in the custody of an officer of another state, in conformity with a valid writ.

Secs. 1 and 5 of the above Act authorize the Governor, as agent and representative of the State, to enter into reciprocal agreements with other states, and Secs. 2 and 3 proscribe the provisions that must be contained in the reciprocal agreements. This authorization of the Governor cannot be attacked as repugnant to Article 4, Section 1 of the Missouri Constitution, providing that the Legislative power shall be vested in the General Assembly, since it gives the Governor no authority to make a law, but only to determine a fact or thing on which the action of the law depends.

And in case of State ex rel. Field v. Smith, 49 S.W. (2d) 74, l.c.76, 329 Mo. 1019, the court said:

> "The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise any unrestricted discretion in applying a law; but it may enact a law complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose. Bailey v. Van Pelt, 78 Fla. 537, 82 So. 789, 793.
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> "The Legislature may, without violating any rule or principle of the Constitution, confer upon an administrative board or officer a large measure of

> discretion, provided the exercise thereof is guided and controlled by rules prescribed therefor.' People v. Products Co., 195 Cal. 548, 234 P.398, 402, 38 A.L.R. 1186; see,also, Ex parte Cavanaugh v. Gerk, 313 Mo. 375, 280 S.W. 51; St. Louis v. Ice & Fuel Co., 317 Mo. 907, 296 S.W. 993, 54 A.L.R. 1082; Merchants' Exchange v. Knott, 212 Mo. 616, 111 S.W. 565, and cases cited."

The authorization of the Governor to act as agent and representative of the State to enter into reciprocal agreements with other states being controlled by definite valid limitations is not a delegation of power to enact a law or to declare what the law shall be, or to exercise an unrestricted discretion in applying the law, and hence is not a conflict with Article 4, Section 1 of the Missouri Constitution.

From a consideration of the whole Act,we are of the opinion that the adoption of same by the General Assembly would not be in conflict with the Constitution of Missouri, or the Constitution of United States.

Respectfully submitted,

APPROVED:

WM. ORR SAWYERS
Assistant Attorney-General.

J. E. TAYLOR
(Acting) Attorney-General.