

District Judge, Authority of to Direct County Attorney in Extradition Cases. Extradition, Authority of District Judge to Direct.

There is no direct authority in the statute authorizing a district judge to direct the county attorney to apply for extradition in a criminal case, but the county attorney would be fully protected by the court's order and in making his application to the governor he should fully set forth his views respecting the merits of the case, irrespective of the order of the court or judge.

Helena, Montana, August 10, 1910.

Hon. Geo. A. Horkan,
County Attorney,
Forsyth, Montana.

Dear Sir:—

I am in receipt of your favor of July 28th, together with an enclosed copy of complaint filed in the justice court of Forsyth township, charging one Loui Blow with the crime of assault in the first degree and also the order of Judge Fox of your district directing you as county attorney to prepare and forward papers for the extradition of the defendant Blow from the state of Illinois.

I am at a loss to know how to advise you in this matter in view of the fact that before an application for extradition will be considered by the governor, you as county attorney must make affidavit setting forth that in your opinion the ends of justice require that said fugitive be brought to this state for trial at the public expense, and that sufficient evidence has been obtained to secure the conviction of said fugitive for the crime with which he is charged, which you say you could not conscientiously do, in view of your investigation of the facts and circumstances surrounding the alleged crime.

I find no direct authority in the statute authorizing a judge to direct a county attorney to apply for extradition in any case, whereas, you know in cases of the commission of crime, a district judge is authorized to direct the county attorney to file information against the person accused. On the other hand you are an officer of the court and I feel that you would be fully protected and justified in following the order and direction of the court.

In the event of your making application for extradition, under the circumstances, I would advise that in your affidavit as county attorney directed to the governor, you make a full statement of the case showing your views in the premises and the order and direction of the district judge.

I do not feel at all justified in advising you to in any way disregard the order of the judge, and therefore advise you to present the application to the governor in accordance of the views herein contained.

Yours very truly,

ALBERT J. GALEN,
Attorney General.