

Informations Against Convicts, Where Filed. Convicts Escaping From Camps, Where Prosecuted. Road Camps, Convicts Escaping From. Venue, Where Convicts Escape From Road Camps.

A convict escaping from a road camp may be charged with having escaped from the state prison but the information should be filed in the county where the prisoner made his escape.

October 6th, 1911.

Hon. Frank Conley,  
Warden, State Prison,  
Deer Lodge, Montana:

Dear Sir:

I am in receipt of your letter of the 3rd inst., submitting the questions:

In what county should informations be filed charging convicts with the crime of escaping, where the escape was made from road camps in which the convict was employed under the authority of Section 9729, which authorizes the employment of such convicts outside of the prison walls.

Sec. 9017 of the Revised Codes provides:

"The jurisdiction of a criminal action for escaping from prison is in any county of the state."

Sec. 16 of Art. III, of the State Constitution provides, in part, that every person accused of crime shall have the right to

"a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed."

Sec. 9731 of the Revised Codes provides:

"The state prison is hereby declared to extend to and over any place or places of employment of the convicts without the walls or enclosure of the prison at which convicts may be employed."

Under the provisions of the constitution above quoted, the authority of the legislature to authorize the institution of a criminal action outside of the county or district in which the offense was committed has been many times called in question.

Sec. 9013 of the Revised Codes, which provides, in part, that the jurisdiction of an offense committed on a train is in any county through which the train passes, and Sec. 9012 provides that where an offense is committed on the boundary of two or more counties, or within five hundred yards thereof, the jurisdiction is in either county. These last two sections are similar in their provisions to said Section 9017.

Similar statutory provisions have been held unconstitutional.

*People v. Brock* (Mich.), 112 N. W. 1116.

*Swart v. Kimball*, 43 Mich. 443, 5 N. W. 635.

*Hill v. Taylor*, 50 Mich. 551, 15 N. W. 899.

*State v. Anderson*, 191 Mo. 134.

*Craig v. State*, 3 Heiskell (Tenn.) 227.

*Buckrice v. People*, 110 Ills. 29.

The question has also received consideration by the following authorities.

3 Hill, 309.

2 Iowa, 286.

4 Minn. 325.

41 Southern, 157.

14 Minn. 447.

21 W. Va. 782.

41 Tenn. 338.

38 Ark. 568.

17 Me. 193.

The principle involved has also been considered by the supreme court of the State of Montana in:

*State v. Beeskove*, 34 Mont. 41.

*State v. DeWolfe*, 29 Mont. 415.

*State v. Tully*, 31 Mont. 365.

In *Watt v. People* (Ills.), 1 L. R. A. 403, the supreme court of Illinois, in considering a statute similar to Sec. 9013 of the Revised

Codes, sustained the validity of the statute on the ground of necessity. The court, nevertheless, said:

“Whenever the LOCUS IN QUO of the offense can be precisely identified \* \* \* \* the trial should, of course, be had in the county where it was committed, but when such is not the case a somewhat different rule must be employed or the offender cannot be tried at all.”

Where a convict escapes from camp the LOCUS IN QUO may be definitely determined, but, by reason of the provision of Sec. 9731, which extends the state prison to and over all places of employment of the convict, the offending convict may be charged with having escaped from the states prison, but the information should be filed in the county where the prisoner made his escape. However, after the information is filed, the defendant may then apply, if he so desires, for change of place of trial by complying with the provisions of Sec. 9219 of the Revised Codes.

Very truly yours,

ALBERT J. GALEN,  
Attorney General.