

Extradition Requisition, Expenses of Officer. Officer, Expenses in Extradition, by Whom Paid.

Under 9709, Revised Codes, an officer who is appointed by the governor to execute process in extradition proceedings is entitled to his expenses, as determined by the state board of examiners, which must be paid by the state.

August 27th, 1913.

Hon. H. C. Patterson,
Chairman of the Board of County Commissioners,
Dillon, Montana.

Dear Sir:

I have your letter of recent date, which reads as follows:

"If the governor of this state issues a requisition warrant for a person who is in some other state, and the sheriff goes to the state where the prisoner may be and brings said prisoner back to the state, who pays the sheriff's expense?"

"Should the state pay the sheriff's expense while outside of the state, and the county pay him mileage to and from the state line, or would the whole amount of his actual expense be a charge for the state to pay?"

In reply thereto I beg to advise that when a sheriff or other officer acts in the capacity as indicated in your letter, the duties which such officer performs are as the agent of the State of Montana, and not as the sheriff of the county, and the county is under no obligation to pay any part of such officer's expenses, whether they be incurred within or without the state. Sec. 9709 of the Revised Codes of Montana specifically provides that when the governor of this state in the exercise of the authority conferred upon him in regard to the extradition of persons charged with crime and found in foreign territory demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, "the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners and paid out of the state treasury." Heretofore this office has had occasion to pass upon the matter under consideration, and your attention is directed to Opinions of Attorney General, 1906-08, at page 181, where the question is discussed at length and the conclusion reached that the state board of examiners must determine the compensation to be allowed for the performance of services by a sheriff under a requisition warrant, and when so determined, compensation shall be made to the sheriff by the state for his services.

Yours very truly,

D. M. KELLY,
Attorney General.