

Extradition—Expense of Officer—Prisoner—Mileage.

An officer returning a prisoner, who has waived extradition, is not entitled to mileage or expenses incurred outside of the territorial limits of the state. The only expense that may be allowed is for conveying the prisoner from the state line before the magistrate issuing the warrant.

George Bourquin, Esq.,
County Attorney,
Butte, Montana.

My dear Mr. Bourquin:

You have requested my opinion on the following statement of facts:

The defendant, for whom a warrant of arrest has been issued, is arrested in another state and agrees to waive extradition and return to this state with the officer. An officer goes to the foreign state and returns with the prisoner.

Query: (1) Is he entitled to receive mileage or other expenses incurred within this state?

(2) Is he entitled to any mileage or expenses incurred without the state?

(3) Is it necessary, before a Sheriff can collect mileage or expenses for going into another state to bring back a fugitive from justice, that he must first procure extradition papers and return him on the warrant issued by the Governor?

Section 4885, R. C. M. 1921, provides for Sheriff's expenses or mileage while in discharge of his duties, both criminal and civil. When a Sheriff is taking a prisoner, held without his own state, he is not acting under any process of the court or in the discharge of his duties under the law, for both of these are limited to the territory within the boundaries of the state of which he is such officer. It is axiomatic that a warrant issued out of a court can have no effect beyond the limits of the state under whose authority it is issued.

In extradition matters the Sheriff acts as the agent of the Governor and not in his official capacity. (State v. Allen, 180 Mo. 27.)

It is apparent, therefore, that no mileage or expenses incurred by the officer outside of the territorial limits of the state can be paid under the provisions of Section 4885. After he comes within the boundaries of the state, he would, of course, be entitled to his expenses under the provisions of Section 4916, which allows actual expenses when conveying prisoners under arrest before a magistrate.

Section 12427, R. C. M. 1921, provides:

“When the Governor of this state, in the exercise of the authority conferred by Section 2, Article IV, of the Constitution of the United States, or by the laws of this state, 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.”

Under this section, it is not necessary to send a Sheriff or other officer; any one employed or appointed by the Governor can serve in this capacity and is entitled to have his accounts audited and allowed by the Board of Examiners. Section 12428, R. C. M. 1921, provides:

“No compensation, fee, or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the Governor the demand mentioned in the last section, or the surrender of the fugitive or for conveying him to this state, or detaining him therein, except as provided for in such section.”

It is, therefore, my opinion that the provisions of these sections are exclusive and that they are the only provisions of the statute covering expenses incurred in such cases and that no expenses can be allowed outside of the state, except where acting under appointment by the Governor. It follows that under the statement of facts presented in your letter the only expenses that may be allowed are for conveying the prisoner from the state line before the magistrate issuing the warrant.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.