

No. 117

EXTRADITION, expenses when prisoner waives—MILEAGE

Held: 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. The expense thereof is a proper charge against the county.

May 19, 1941.

Mr. E. Gardner Brownlee
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Brownlee:

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.

Is an officer returning a prisoner—who has waived extradition—entitled to mileage or expenses incurred outside the territorial limits of the state?

And what expenses, of any, may be allowed an officer for conveying the prisoner from the state line before the magistrate issuing the warrant?

Section 3, Chapter 121, Laws of 1941, 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 evident 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 is not in his official capacity. (State v. Allen, 180 Mo. 27.)

Under the provisions of Section 3, Chapter 121, Laws of 1941, no mileage or expenses incurred by the officer outside the territorial limits of the state can be paid. However, after he comes within the boundaries of the state, he would, of course, be entitled to his expenses under the provisions of Section 4, Chapter 121, Laws of 1941.

Under Chapter 190 of the Laws of 1937, which is an Act to make uniform the procedure of interstate extradition, particular reference being made to Section 24 thereof, it is provided that,

"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."

Extradition is the regular and only course provided for returning one arrested of crime in a sister state, unless the prisoner voluntarily consents to return.

Under the provisions of said Section 24, Chapter 190, Laws of 1937, it is not necessary to send a sheriff or other officer. Anyone employed by the Governor to bring back such fugitive is entitled to have his account audited and allowed by the Board of Examiners and paid out of the state treasury, and, under the provisions of Section 12428 of the Revised Codes of Montana, 1935, no compensation, fee, or award 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 Section 12428, Revised Codes of Montana, 1935, or the surrender of the fugitive or for conveying him to this state or detaining him therein except as provided for in such section.

Therefore, it is my opinion 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. The expense thereof is a proper charge against the county.

Sincerely yours,

JOHN W. BONNER
Attorney General