

EXTRADITION: - A child who flees the State, although in the custody of the court as a neglected and delinquent, not having been convicted of any crime, cannot be extradited.

September 19, 1941

9-30

Hon. Guy D. Kirby,  
Judge, Juvenile Court  
Division Number One  
Greene County  
Springfield, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated September 18, 1941, upon the following statement of facts:

"I don't want to impose on your office, but I would like very much to have your opinion on this case. It is an emergency that has to be acted on right speedily.

"I have under the jurisdiction of the Juvenile Court, as a neglected child, a girl now 17 years of age. Several years ago, when she was of juvenile age, she was adjudged neglected, not delinquent, and placed in the care of the Probation Officer, who placed her, with the Court's approval, in what is called the Women's Welfare Home, a local institution, for an indefinite stay; subject, of course, to the future orders of the Court.

"A few weeks ago this girl escaped one night and we now have information that she is held in California. What I would like to have is your opinion as to whether or not it is the duty of the Court to have the Probation Officer go and bring her back;

and if so whether or not his expenses are properly charged against the County; and if so, what mileage and legal expenses he would be authorized in charging.

"Not being a delinquent, having committed no offense other than simply running away, I take it she would not be regarded as a fugitive from justice, requiring extradition. The girl's home has been here and she has a father living here who is unable to take care of her. For that reason the Court had to provide a place for her to stay. If the girl is not brought back, the result will probably be that she will be a wanderer and it strikes me that this Court is under some obligation to the child.

"I have my ideas about this question I am asking you, but in view of the fact that the Probation Officer is my appointee and acts under my orders, I would greatly appreciate an opinion from your office, so that I will have it in case any question should arise as to the right of the Probation Officer to be paid out of the County Treasury.

"I am enclosing memorandum of some sections of the statutes that may facilitate your investigation of the matter, if you are not already thoroughly familiar with it. \* \* "

We call your attention to Section 662, U. S. C. A. 18, Criminal Code and Criminal Procedure, Page 284, which reads as follows:

"Whenever the executive authority of any State or Territory demands any person as

a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. \* \* \* \* \*

(Underscoring ours.)

It will be noted that certain portions of the aforesaid section have been underlined, and from reading these you will note that in order to extradite a person he must first be a fugitive from justice, and, that a copy of an indictment or an affidavit must have been filed against him, charging the person with having committed treason, felony or other crime. Our department has taken occasion to call the Prosecutor's Office of Greene County and we have ascertained that the person referred to in your opinion request is charged as a delinquent, and was not charged with any crime. Therefore, this opinion proceeds upon the theory that no crime was committed by the juvenile.

We call attention to the case of State ex rel. Boyd v. Rutledge, 13 S. W. (2d) 1061, wherein the Court had this to say: (l. c. 1063)

"The Juvenile Court Act is applicable to children under 17 years of age, and

it deals specifically with such of those children as fall within its definitions of 'neglected' and 'delinquent.' In the definition of a 'delinquent child,' there is a long enumeration of acts, the commission of any one of which will constitute the doer a delinquent; these acts range from a violation of the criminal law all the way down to the habitual use of profane language. All of the acts so catalogued are by force of the statutes acts of delinquency. In its provisions for dealing with children who violate the criminal law, the act seems to have a dual aspect. \* \* \* \* "

The Court, in this case, in passing upon several sections of the Juvenile Act, had this to say:

"We now turn to the Act as it was when State ex rel. Matacia v. Buckner was decided, for the language 'that gives color to the view that it authorizes trial and punishment for crime.'

"Section 2592: ' \* \* \* The practice and procedure prescribed by law for the conduct of criminal cases shall govern in all proceedings under this article in which the child stands charged with the violation of the criminal statutes of the state. \* \* '

"Section 2591: ' \* \* \* But nothing in this article shall prevent the juvenile court from inflicting a punishment which shall extend beyond

the age of majority in cases where the delinquent shall be convicted of a crime, the punishment of which under the statutes of this state, when committed by persons over the age of eighteen years, is death or imprisonment in the penitentiary for a term of not less than ten years, \* \* \* '

"Section 2598: ' \* \* \* All punishments and penalties imposed by law upon persons for the commission of offenses shall, in the case of said delinquent children, rest in the discretion of the judge of the juvenile court, and execution of any sentence may be suspended or remitted in his discretion, '

"In the Matacia Case just referred to, the defendant was charged in the juvenile court with having committed rape, not as a crime, but as an act of delinquency, and it was held, among other things, that in those circumstances the defendant was not as to the mode of procedure entitled to the benefits of certain constitutional safeguards designed for the protection of persons put on trial for the commission of crime. \* \* \* \* " (Underscoring ours.)

Leading authorities are accurately summarized as follows in 4 American Jurisprudence page 14, Section 19:

"A warrant of arrest issued in one state may not be executed in another state, for it has no validity beyond the boundaries of the state by whose authority it was issued. A warrant may confer authority on a police

officer or private individual to make an arrest anywhere within the boundaries of a state, but it has no extraterritorial effect of any kind, and will not justify an arrest made outside the limits of the state." (citing authorities)

To the same effect are authorities collected in an annotation in 61 A. L. R. 380. The courts of the United States have followed the same rule (McLean v. State of Mississippi ex rel Roy (5 C. C. A. ) 96 F. (2d) 741, 745, 119 A. L. R. 670, certiorari denied by U. S. Sup. Ct. 305 U. S. 623, 59 Sup. Ct. 84, 83 L. Ed. 399; and, Kirkes v. Askew, Sheriff, (D. C. Okla.) 32 Fed. Supp. 802, 804 (2) et seq.). There is no Missouri statutory authority for arrest on foreign warrants.

In the case of Ex Parte Bass, 40 S. W. (2d) 457, 1. c. 462, - (328 Mo. 195)- the Court said:

"\* \* \* The Juvenile court of Greene county was without jurisdiction to commit the petitioner to the penitentiary for the commission of a crime because no information had been filed by an officer having authority to file an information charging a crime.

"The Juvenile court had no jurisdiction to sentence the petitioner to the penitentiary or order his commitment even if a proper information had been filed. The petitioner cites section 8350, R. S. 1929, as authorizing the juvenile court to render such sentence and make a commitment. There is nothing in that section which supports his position except the closing sentence, which was definitely held to be unconstitutional in State ex rel. Wells v. Walker (Mo. Sup.) 34 S. W. (2d) loc. cit. 129, et seq. (Underscoring ours.)

In the case of Bonzo v. Kroger Grocery & Baking Co., et al, 125 S. W. (2d) 75, l. c. 77, the court said:

"In Ex parte Bass, 328 Mo. 195, 200, 40 S. W. 2d 457, 459 (2), this court en banc said: ' \* \* \* in State ex rel. Wells v. Walker (326 Mo. 1233), 34 S. W. 2d 124, a juvenile court's jurisdiction in such a case (proceedings involving delinquent children) ceases upon its determination and direction that the defendant shall be proceeded against, not as a delinquent, but under the general criminal law.' The Bass case held that, after an order in the circuit court, juvenile division, had been made directing that the accused be proceeded against, not as a delinquent but, under the general criminal law, a commitment thereafter issued out of said court, juvenile division, on a judgment imposing a penitentiary sentence upon a plea of guilty, under which commitment the accused was being held in the penitentiary, was void. It follows that the second judgment in the instant case of the circuit court, juvenile division, finding the present plaintiff not guilty, is of no probative value."

Therefore from the reading of Section 662 of the Federal Statutes, supra, together with the excerpts from the Missouri decisions, it necessarily follows that Juveniles under the Missouri law may be handled in one of two manners by the Juvenile Court. They may be charged with a crime, if they have committed a crime, or they may be charged and dealt with by the Court as neglected and delinquent children, if they have committed a crime, or are otherwise delinquent.

On the other hand, if a child is treated by the Court, merely as a neglected and delinquent child, as the situation is set forth in the opinion request, we can turn to no statute which makes it a crime to run away from a county home in which the child has been committed by the Court as a delinquent child, and reliance has to be made upon the record, as it appears in the Juvenile Division of the Circuit Court of the County. When turning to the record we find that no affidavit or complaint was made against the child charging a crime. Therefore, we are of the opinion that the Executive authority of this State has no authority, under Section 662 of the Federal Statute, to demand the executive of another State to turn over to the Messenger of this State a delinquent child who has fled from the home in which it was committed, unless, at this time the delinquent child can be charged with some crime by affidavit, in a new procedure.

CONCLUSION.

We are of the opinion that if a child who has been tried by the Circuit Court in the Juvenile Division, merely as a neglected and delinquent child and has not been proceeded against for some particular crime, departs from the State, it cannot be brought back to this State through extradition.

Respectfully submitted,

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APPROVED:

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