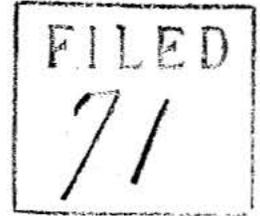


EXTRADITION: Only messenger appointed by Governor under Sec. 3976, R.S. Mo. 1939, has authority to return fugitives from justice to this state, and expense must be paid from State Treasury in accordance with Sec. 3977, R.S. Mo. 1939, except in cases where defendant is returned for wife or child abandonment the expense of extradition must be paid by County Court.

March 21, 1947



3/27

Board of Police Commissioners
Kansas City, Missouri

Gentlemen:

This office is in receipt of your request for our official opinion as to whether the Board of Police Commissioners should advance money to pay traveling expenses to return to Missouri persons charged with a crime who have fled to other states to avoid prosecution, and whether it is the duty of the County concerned or the Prosecuting Attorney to provide those funds.

Extradition, or exchange of fugitives from justice between states, is governed by the Federal Constitution, Federal statutes and Federal decisions. Direct authority is found in Chapter 18, U.S.C.A., Section 662, which is 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. If no such agent appears within six months

from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory."

This has been supplemented by Article 9, Chapter 30, R. S. Mo. 1939, which provides for the appointment of a messenger by our Governor to return the fugitive. Section 3976, of that Article, provides:

"Whenever the governor of this state shall demand a fugitive from justice from the executive of another state or territory, and shall have received notice that such fugitive will be surrendered, he shall issue his warrant, under the seal of the state, to some messenger, commanding him to receive such fugitive and convey him to the sheriff of the county in which the offense was committed, or is by law cognizable."

The following Section, 3977, sets out the manner of payment of the individual appointed by the Governor as messenger, and provides:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."

The Federal statute above cited contemplates only extradition for violation of state criminal laws, and it is assumed that you also refer to such violations, since the possibility of payment by the County is contemplated as well.

A search of the statutes fails to reveal any authority for the payment of extradition expenses other than Section 3977, supra, except that Section 2250, R. S. Mo. 1939, applicable only to the City of St. Louis, provides for the establishment of a fund for expense in extraditing persons charged with contributing to the delinquency of minors, and Section 4422, R. S. Mo. 1939, provides for the payment, by the various county courts, of the expense of extradition of those fugitives charged with child abandonment. Since the latter section applies to Jackson County, it is set out herein:

"It shall, in any case in which application is properly made by the officer or officers responsible for the execution of the law, be the duty of the county court in any county and of the treasurer of the city of St. Louis, to provide the funds necessary for the extradition of any person charged with violating the provisions of section 4420. All applications for fund under this section shall state the name of the accused and the time, place and pertinent facts of the alleged offense, and shall include an itemized statement of the necessary and actual expenses incurred in the extradition of such person, and shall be signed and sworn to by the officer making such application."

Section 4420, above referred to, defines the crime of wife or child abandonment.

We believe the general rule to be that payment of the expense of the messenger appointed by the Governor must be made in accordance with Section 3977, with the exceptions just noted.

In State ex rel. See v. Allen, Auditor, 79 S. W. 164, 180 Mo. 27, a decision by the Missouri Supreme Court, the marshal of that court had brought back from Idaho a defendant who had fled from Missouri while an appeal was pending in the Supreme Court from a conviction of bigamy. The marshal had been appointed messenger by the Governor, but was attempting to collect his expense by virtue of his execution of a capias (order to take the defendant into custody) issued by the Supreme Court. We consider the following language in that case decisive of the question under discussion, l. c. 30, 31, 32 (180 Mo.):

" * * * It is axiomatic under our complex system of government that the laws and judgments and powers conferred by a state have, proprio vigore, no extra-territorial force.

* * * * *

" * * * The relator acted as a messenger appointed by the Governor, and the only remaining question is whether this court can, by mandamus, compel the Auditor to issue a warrant for the fees and expenses of the relator, before the Governor has ascertained the amount that shall be allowed, and before he has issued his certificate therefor.

"Under the statute quoted (sec. 2744, R. S. 1899) the duty of determining the question of the compensation and expenses of such messenger, is vested solely in the Governor, and he is the head of a co-ordinate branch of the government, * * * and hence he can not be interfered with in the discharge of his duties by the courts. * * *

* * * The Governor alone has the power to determine how much shall be paid, and to order it paid. Until he does so the Auditor cannot lawfully issue a warrant therefor.
* * *

Section 2744, R. S. 1899, referred to in the above extract, is very similar to Section 3977, R. S. Mo. 1939, supra.

CONCLUSION

It is the conclusion of this office that only the messenger appointed by the Governor of Missouri in accordance with Section 3976, R. S. Mo. 1939, has authority to return fugitives from justice to this State, and that such messengers must be paid from the State Treasury in accordance with Section 3977, R. S. Mo. 1939, except that in cases in which the defendant is being returned on charges of wife or child abandonment the expense of extradition must be paid by the County Court of the County concerned in pursuance to Sections 4421 and 4422, R. S. Mo. 1939. We find no authority for the advancement of expense for extradition by the Board of Police Commissioners of Kansas City, or by Jackson County, except that found in the two sections last cited.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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