

Fourth, the action which should be taken by the board of county commissioners, after an eligible list for the position of superintendent of the county home has been certified to them by the Civil Service Commission, is to make an appointment to the position from the said eligible list.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

31.

EXTRADITION—FUGITIVES WITHIN OHIO—RIGHT OF GOVERNOR TO
 DELEGATE AUTHORITY TO HEAR MATERIAL FACTS BEFORE
 TAKING ACTION UPON THE DEMAND.

SYLLABUS:

The Governor, upon receipt of a demand from the chief executive authority of another state for extradition of a person found within the jurisdiction of this state, may properly delegate to a subordinate in his office the authority to hear matters relating to such extradition and report to him, and if satisfied from such report, may take action thereof.

COLUMBUS, OHIO, January 28, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge your letter of January 18, 1929, as follows:

“The Governor of Ohio is authorized by law to grant requisitions upon Governors of sister states and upon other countries for the arrest and rendition of persons charged with crime in this state and who have fled the jurisdiction. Applications are frequently made to the Governor that he hear certain defenses which the alleged fugitive might have, tending to establish that, first, he is not the person charged in the papers; and, second, that the demand is not made in good faith for the punishment of crime, but for the purpose of collection of debt or pecuniary mulct.

When such application is made, prior to the presentation of the requisition papers, it has been the policy to give the alleged fugitive an opportunity to be heard. Can the Governor delegate this power to an attorney in his office or to a member of the Attorney General's department, or must he hear it personally?

If you will advise me on this point, I will appreciate it very much.”

While the first sentence of your letter would apparently not so indicate, I am informed that your particular question is as to the necessity for a hearing and the rules governing such hearing where demand is made on you by the Governor of another state for the return of a person claimed to be a fugitive from justice from that state. Particularly you inquire as to your authority to delegate the power to hear matters relating to such extradition to an attorney in your office or to a member of this office, so as to avoid the necessity of personally hearing all of these matters.

The right of extradition is derived primarily from Section 2 of Article IV of the

Constitution of the United States, of which the first two paragraphs are as follows :

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

The Congress of the United States dealt with the same subject matter by enacting Revised Statutes, Paragraph 5278, which is also designated as paragraph 662 of the United States Code Annotated. This provision of law 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."

The provision of the United States Constitution and the statutes enacted pursuant thereto are the supreme law of the land and, accordingly, even in the absence of legislation in this state, it would be your duty, as the chief executive authority of the state, to deliver up a fugitive from justice charged with crime in another state upon proper demand by the executive authority of such state. The section of the federal laws, quoted above, prescribes the details incident to the making of a proper demand. These include the production of a copy of an indictment or affidavit charging the person demanded with the commission of a crime, certified as authentic by the Governor of the state demanding extradition.

It is to be observed that neither the provision of the United States Constitution nor the terms of the statute make any requirement as to a hearing by the executive authority prior to action taken upon the demand for extradition. In spite of this, however, it has been held the duty of the chief executive authority of the state to determine that the requisition is in proper form and duly authenticated; that the person named therein is in fact the person within this jurisdiction; that he is a fugitive from justice; and that he is charged with crime in the jurisdiction from which he has fled. While there is some doubt as to the right of the chief executive to inquire whether the person demanded has been substantially charged with crime and whether he is a fugitive from justice (see *Munsey vs. Clough*, 196 U. S. 364), yet many state courts recognize the right to inquire into these matters.

An interesting question might arise as to the power of the state to prescribe a broader field of investigation than that defined in the Constitution and statutory

provisions of the federal government. Since an answer to this is not necessary in answering your specific question, I shall not attempt to give it consideration.

The statutes of Ohio contain additional provisions with relation to extradition, which are pertinent to your inquiry.

Section 109 of the General Code provides as follows:

"On demand, the governor, when authorized by the Constitution of the United States, may deliver to the executive authority of another state or territory a person charged therein with treason, felony or other crime committed therein. On application, the governor may appoint an agent to demand of the executive authority of another state or territory a person charged with felony who has fled from justice in this state."

Section 110 is as follows:

"The demand or application must be accompanied by sworn evidence that the party charged is a fugitive from justice, and that the demand is made in good faith for the punishment of crime and not for the purpose of the collection of debt or pecuniary mulct or of removing the alleged fugitive to a foreign jurisdiction to serve him with civil process, and by a duly attested copy of an indictment or on information, or a duly attested copy of a complaint made before a court or magistrate authorized to take it and accompanied with an affidavit or affidavits to the facts constituting the offense charged by persons having actual knowledge thereof."

It is to be observed that this section makes requirements in addition to those provided by the United States statute, and the authority to do so is at least questionable. See *In the Matter of Van Vleck*, 2 Weekly Law Bulletin, 763. In the case of *Maloney vs. Sheriff*, 98 O. S. 463, the Supreme Court, in a memorandum opinion, found it unnecessary to decide whether the provisions of this section are directory or mandatory.

For the purpose of this opinion, however, I shall assume you are raising no question with respect to the sufficiency of the papers as presented with the demand for extradition. By its terms the section is equally applicable to an application for requisition made to you by local authorities and a demand made by the executive of another state. There could be, of course, no question as to the authority of the Legislature to enact this section as applied to the application made to you by local authorities on requisitions for fugitives located in other states.

Section 111 provides as follows:

"The demand or application shall be accompanied with a statement in writing from the prosecuting attorney of the proper county, who shall briefly set forth all the facts of the case, the reputation of the party or parties asking the requisition, and whether in his opinion the requisition is sought from improper motives or in good faith to enforce the criminal laws of this state, and such further evidence in support thereof, as the governor may require. Fugitive convicts shall also be so surrendered and demanded upon sworn evidence duly authenticated, satisfactory to the governor. For issuing a requisition, fees not to exceed five dollars may be charged."

While the section mentions both demand and application, the context of the first sentence thereof apparently limits its force to applications for extradition of persons in other jurisdictions. At all events, the language of this section makes no provision as to a hearing before action by the executive authority.

The section which has perhaps raised your specific inquiry is Section 112 of the Code, which is as follows:

“When the demand or application is made for the surrender of a person held in custody or under recognizance to answer for an offense against the laws of this state, or by force of civil process, or for the surrender of any other person, the attorney general or the prosecuting attorney of a county, on the request of the governor, shall investigate forthwith the grounds thereof, and transmit to the governor a report of all the material facts which may come to his knowledge, together with an abstract of the evidence in the case, and an opinion as to the legality and necessity of complying with the demand or application.”

This section is not, in my opinion, mandatory so far as action by the Governor is concerned. The Governor may or may not request action by the prosecuting attorney or the attorney general. If such request is made, investigation must be had as outlined in the section and a report of all the facts submitted to the Governor, together with a transcript of the evidence and an opinion thereon. Whether you shall proceed under this section is entirely optional with you and, accordingly, the section in no way makes mandatory that a hearing be had.

Section 113 of the Code then provides:

“If the governor decides to comply with the demand for the surrender of a person charged with an offense committed in another state or territory, he shall issue a warrant to the sheriff of the county in which the person so charged may be found, commending him forthwith to arrest and bring such person before a judge of the supreme court, of the court of appeals, or of the common pleas court, to be examined on the charge.”

These are the only sections of the Code pertinent to your inquiry and the conclusion is obvious that the investigation of the particular demand is a matter which rests entirely within your judgment. You may determine your action upon the papers submitted without any formal hearing, or you may delegate such investigation as you deem necessary to any one you may select, or you may make the investigation and hold a hearing yourself. It follows, accordingly, that you may accept whatever evidence you may deem proper either in the form of documents, reports to you by subordinates delegated to make an investigation, or evidence submitted personally to you at a hearing, either formal or informal, in determining what course you shall adopt. Manifestly this would include the right to authorize a subordinate in your office, or a member of the staff of this office, to hear any pertinent matters, since such a hearing is not a matter of right at all.

There are many authorities holding that the executive of the surrendering state may act in the absence of the accused and without any notice to him.

Marbles vs. Creecy, 215 U. S. 63.

Munsey vs. Clough, 196 U. S. 346.

Ex Parte Chunz Kin Tow, 218 Fed. 185.

Farrell vs. Hawley, 78 Conn. 150.

While no notice and hearing is necessary, the executive should be satisfied, as before stated, that the person demanded is charged with crime and that he is a fugitive from justice. The statutes of Ohio provide that the evidence must be such as the Governor may require. Accordingly, if the investigation of a subordinate is satis-

factory to you, your determination may be made in reliance thereon. It has been held that an extradition warrant is not impaired because a hearing was held before the Governor's private secretary and not before the Governor.

Flournoy vs. Owens, 310 Mo. 355.
Ex Parte Pelinski, 213 So. W. 809.

I may point out that the issuance of the warrant prescribed by Section 113 of the Code, *supra*, is followed by a hearing in the Supreme Court, Court of Appeals or Common Pleas Court, the details of which are prescribed by Sections 114 and 115 of the Code. Since these sections are not of importance to your inquiry, I need not quote them. It should be stated, however, that these sections provide for a hearing at which the accused is entitled to be present and to be heard.

In view of what has been said, and by way of specific answer to your inquiry, I am of the opinion that the Governor, upon receipt of a demand from the chief executive authority of another state for extradition of a person found within the jurisdiction of this state, may properly delegate to a subordinate in his office the authority to hear matters relating to such extradition and report to him, and, if satisfied from such report, may take action thereon. The final action of issuing the warrant to the sheriff, as prescribed by Section 113 of the General Code, or refusing extradition, as the case may be, must, of course, be the personal act of the Governor and cannot be delegated.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

32.

APPROVAL, WITH CONDITIONS, LEASE TO PREMISES AT 961 SOUTH HIGH STREET, COLUMBUS, OHIO—ANNA E. SWINGLE.

COLUMBUS, OHIO, January 28, 1929.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval a certain lease in triplicate executed by one Anna E. Swingle, leasing and demising to the State of Ohio certain premises situated at Number 961 South High Street, Columbus, Ohio, for a term of six months from the first day of January, 1929.

The only question of any consequence that is suggested on the examination of said lease is one arising out of the renewal clause in said lease, which reads as follows:

“Said lease subject to renewal after June 30, 1929, at the option of the State of Ohio, by its proper representatives, upon the same rental and upon the same terms and conditions as heretofore mentioned herein.”

It will be noted that said renewal clause does not specify the term of such renewal and when the same shall begin and end, other than as the term of such renewal may be inferred from the provision of said renewal clause that such renewal lease shall be upon the same rental and upon the same terms and conditions “as heretofore