

3009

EXTRADITION REQUISITION—GOVERNOR OF OHIO—PERSON FOR WHOM ISSUED RECEIVED FROM STATE WHERE THERE IS THE UNIFORM DEPENDENT'S ACT — REQUEST FOR RETURN OF PERSON TO DEMANDING STATE—CHARGE DESERTION OR NON-SUPPORT—WHERE PERSON SUBMITS TO COURT OF RECORD OF THIS STATE AND COMPLIES WITH COURT'S ORDER OF SUPPORT, PERSON MUST BE RELIEVED OF EXTRADITION—SECTION 6 OF ACT—COURT TO OBTAIN JURISDICTION MUST COMPLY WITH SECTIONS 8007-10, 8007-11, 8007-12 GC—WHERE NO COMPLIANCE, OBLIGOR MAY NOT BE RELIEVED OF EXTRADITION BY OFFER TO SUBMIT TO JURISDICTION OF COURT OF RESPONDING STATE.

SYLLABUS:

A person for whom an extradition requisition has been received by the Governor of Ohio, from a state which has enacted the Uniform Dependent's Act, asking for the person's return to the demanding state for desertion or non-support, must be relieved of extradition under Section 6 of the Act, where such person submits to a court of record in this state and complies with the court's order of support. Such court cannot, however, obtain jurisdiction to make such order of support otherwise than in the manner designated in Sections 8007-10, 8007-11 and 8007-12, General Code; and where there has been no compliance with the provisions of these sections an obligor may not be relieved of extradition by a mere offer to submit to the jurisdiction of the court of the responding state.

Columbus, Ohio, August 31, 1953

The Honorable John W. Keefe, Executive Secretary to the Governor
Columbus, Ohio

Your request for my opinion reads as follows:

“During hearings which are conducted by me as Executive Secretary to Governor Frank J. Lausche, acting as his designee, in extradition and rendition matters and their relationship to the Reciprocal Act for Support of Dependents (Uniform Dependent's Act), the question has arisen as to whether or not there is a conflict between the language contained in Section 3 of said Act and Section 6 thereof. The latter section (our Ohio General Code 8007-6) provides that any obligor who submits himself to the jurisdiction of a court authorized by the Uniform Dependent's Act shall be relieved of extradition for desertion or non-support dur-

ing the period of such compliance. Section 3 of the Act (our Ohio General Code 8007-3) establishes the law that the remedies provided in the Uniform Dependent's Act are in addition to and not in substitution for any other remedies.

"The specific question which we submit to you is whether or not an alleged fugitive for whom an extradition requisition has been received by the Governor of Ohio asking for the fugitive's return to the demanding state for desertion or non-support must be relieved of extradition, that is, relieved from returning to the demanding state, if he submits to any court of record in this state. There is no problem where the requesting state is willing to drop the extradition request if the accused submits to the jurisdiction of the court in the asylum state. The problem arises in cases where there is an unwillingness to drop the extradition request and the Governor of the demanding state urges the rendition of the fugitive even though the latter is willing to submit to the authority of an appropriate court. Is the accused relieved of extradition which, I suppose so far as the mechanics of the situation are concerned, could be accomplished by the Governor of Ohio's denial of the request of the demanding state, or may the demanding state, relying upon the provisions of Section 3 of the Uniform Dependent's Act, successfully insist upon the extradition remedy and right which it has under the Federal Constitution, Federal Statutes and particularly Ohio General Code Section 109-2 (part of the Uniform Criminal Extradition Act), which states that it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

"If it is your opinion that the right of a state to demand extradition is not such a remedy as is contemplated by Section 3 of the Uniform Dependent's Act, then to what, in your judgment, does the word 'remedies' in Section 3 refer, and what does it include.

"It is well to note that the question which we are propounding is concerned only with a situation in which both the states involved have enacted the Uniform Dependent's Act.

"May we please have your formal opinion as to these matters? Your prompt attention will be appreciated."

The precise question which I understand to be presented is whether relief of extradition can be had in a case where (1) no petition has been filed in the courts of the demanding and receiving states, (2) the obligor offers to submit to the jurisdiction of the court of the responding state, and (3) the demanding state insists upon the obligor's rendition despite such offer.

Sections 8007-1 to 8007-6, inclusive, General Code, read as follows:

Section 8007-1.

“This act may be cited as the reciprocal act for support of dependents.

Section 8007-2.

“As used in this act unless the context requires otherwise.

“(1) ‘State’ includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

“(2) ‘Initiating state’ means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

“(3) ‘Responding state’ means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

“(4) ‘Court’ means any court of record of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

“(5) ‘Law’ includes both common and statute law.

“(6) ‘Duty of support’ includes any duty of support imposed or imposed by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

“(7) ‘Obligor’ means any person owing a duty of support.

“(8) ‘Obligee’ means any person to whom a duty of support is owed.”

Section 8007-3.

“The remedies herein provided are in addition to and not in substitution for any other remedies.”

Section 8007-4.

“The duty of support imposed by the laws of this state or by the laws of the state where the obligee was present when the failure to support commenced as provided in section 8007-7 of the General Code and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.”

Section 8007-5.

“The governor of this state may demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state and may surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of

failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other state.”

Section 8007-6.

“Any obligor contemplated by section 8007-5 of the General Code, who submits to the jurisdiction of the court of such other state and complies with the court’s order of support, shall be relieved of extradition for desertion or non-support entered in the courts of this state during the period of such compliance.”

Section 109-2, General Code, provides for interstate rendition of persons charged with crimes in other states as follows:

“Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.”

Clearly a person charged with failure to support dependents where such failure is made a crime in another state may, upon proper demand made, be subject to rendition by the Governor of Ohio under Section 109-2, General Code. Section 8007-5, General Code, specifically provides for the surrender to the authorities of another state one charged with failure to provide support.

However, under Section 6 of the Uniform Dependent’s Act, it is provided that one who submits to the jurisdiction of the court of the refuge state and complies with the court’s order of support, *shall be relieved of extradition* for desertion or non-support entered in the courts of the demanding state. Relief from extradition then is given by the law of the *demanding state*, where that state has enacted the Uniform Dependent’s Act. Ohio must give full credit to the laws of her sister states.

In the case of demands made on other states by Ohio, relief of extradition is given by Section 8007-6, General Code. While the laws of Ohio provide generally for the making of demands for the return of persons

charged with crimes in this state, and non-support is such a crime, effect will be given the special provisions of Section 8007-6, General Code, and such persons may be relieved of extradition where they comply with the provisions of that statute.

The first paragraph of the syllabus in *The Acme Engineering Co., v. Jones, Adm'r.*, 150 Ohio State 423, reads as follows :

“A special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision. (*State, ex rel. Stellar et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, and paragraph one of the syllabus in *State, ex rel. Elliot Co., v. Conuar, Supt.*, 123 Ohio St., 310, approved and followed.)”

You raise the question as to what is meant by the word “remedies” contained in Section 3, Uniform Dependent’s Act (Section 8007-3, General Code of Ohio) ?

A “remedy” is the means employed to enforce a right or redress an injury. *Words and Phrases*, Volume 36, page 829.

As herein contemplated the right to support is the “right” involved or the right to punish for failure to support. The “remedy” to be employed to enforce the right or to redress the injury is not extradition, but rather a criminal action for non-support, a civil action for support or reimbursement, a contempt proceeding where there is non-compliance with an order for support made by a court, or some other action designed to obtain support for dependents or punish for failure to support them. Strictly speaking, the extradition for which provision is made in the Uniform Act, is not a “remedy.” It is, however, in many instances of non-support, a necessary and indispensable means of acquiring jurisdiction so that some “remedy” for non-support may be employed. When so employed it is clearly remedial in nature, and when it is considered that the primary objective of the uniform dependent’s act, as disclosed by its title (Amended Substitute House Bill No. 1, 124 Ohio Laws 112), is “to secure support for dependent wives, children and other relatives from persons legally responsible for their support,” I am strongly inclined to the notion that the extradition provision in this act was intended by the Legislature to be included among the “remedies herein provided.”

I do not deem it necessary to resolve this point, however, for the purposes of the present inquiry. By reference to Section 8007-6, supra, it will be observed that relief of extradition can be had only if the obligor (1) submits to the jurisdiction of the court of the responding state and (2) complies with such court's order of support. Quite clearly such court cannot make any such order until it has obtained jurisdiction in a case properly before it. The procedure whereby the responding state acquires such jurisdiction is plainly set out in Sections 8007-10, 8007-11 and 8007-12, General Code. These sections read :

Section 8007-10.

"The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information."

Section 8007-11.

"If the court of this state acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, he shall so certify and shall cause certified copies of the petition, the certificate and an authenticated copy of this act to be transmitted to the court of the responding state."

Section 8007-12.

"When the court of this state, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) notify the prosecuting attorney or his representative who shall thereafter represent the initiating state, (3) set a time and place for a hearing, and (4) take such action as is necessary in accordance with the laws of this state to obtain jurisdiction."

The plain import of Section 8007-12, supra, is that the court of the responding state acquires jurisdiction in particular cases only after the action designated in Sections 8007-10 and 8007-11, supra, has been taken in the court of the demanding state. These provisions are plain and unambiguous and provide no basis or necessity for such a construction as would permit the court to obtain such jurisdiction in any manner other than that which is thus provided. Moreover, these provisions contain not the slightest suggestion that the process may be reversed, so to speak, by allowing the obligor to initiate an action in the court of the responding state in order to answer a supposed demand in a situation in which no actual demand has

been made. I am bound to conclude, therefore, that the obligor in such case has no right of election but rather that such right of election as is provided in this act between (1) extradition and (2) affording the obligor the opportunity to be relieved of extradition under the provisions of Section 8007-6, General Code, lies with the demanding state.

Accordingly, in specific answer to your inquiry, it is my opinion that a person for whom an extradition requisition has been received by the Governor of Ohio, from a state which has enacted the Uniform Dependent's Act, asking for the person's return to the demanding state for desertion or non-support, must be relieved of extradition under Section 6 of the Act, where such person submits to a court of record in this state and complies with the court's order of support. Such court cannot, however, obtain jurisdiction to make such order of support otherwise than in the manner designated in Sections 8007-10, 8007-11 and 8007-12, General Code; and where there has been no compliance with the provisions of these sections an obligor may not be relieved of extradition by a mere offer to submit to the jurisdiction of the court of the responding state.

Respectfully,

C. WILLIAM O'NEILL
Attorney General