

OPINION NO. 72-105

Syllabus:

1. When an accused has waived formal extradition, reimbursement for any expenses that may be incurred in effecting his return must be paid from the county treasury pursuant to either Section 307.50 or Section 2335.10, Revised Code.

2. When a requisition for extradition has been issued by the governor, all expenses incurred in effecting the return of the accused must be reimbursed from the county treasury pursuant to either Section 307.50 or Section 2151.45, Revised Code, with the exception of fees paid to the officers of the foreign state, and any necessary travel expenses up to ten cents a mile, which must be paid out of the state treasury pursuant to Section 2963.22, Revised Code.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio

By: William J. Brown, Attorney General, November 9, 1972

I have before me your request for my opinion, which reads as follows:

"May I have your opinion as to the source of funds from which the Sheriff may be reimbursed for his expenses in traveling to another state for the purpose of returning for trial an accused who is under indictment in the county."

Provisions for reimbursement of expenses incurred in returning a fugitive, who left the state while under indictment, are found in several Sections of the Revised Code.

Section 307.50, Revised Code, provides as follows:

"When any person charged with a felony has fled to any other state, territory, or country, and the governor has issued a requisition for such person or requested the president of the United States to issue extradition papers, or the prosecuting attorney of any county in the state seeking the return of a felon has received notice of waiver of extradition, the board of county commissioners may pay, from the county treasury to the agent designated in such requisition, request to the president, or order by the prosecuting attorney seeking return, all necessary expenses of pursuing and returning the person so charged, or so much of such expenses as seem just."

Section 2335.10, Revised Code, which is somewhat narrower in its application, provides as follows:

"The board of county commissioners may allow and pay the necessary expenses incurred by an officer in the pursuit of a person charged with a felony, who has signed a formal waiver

of interstate extradition or fled the country."

Section 2963.22, Revised Code, which is yet narrower in its application, provides as follows:

"Fees paid to the officers of the state on whose governor the requisition is made under section 2963.21, of the Revised Code, and not exceeding ten cents a mile for all necessary travel in returning such prisoner, shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor of state."

Finally, Section 2151.45, Revised Code, which applies only to extradition proceedings involving an individual who has been accused of violations of the juvenile court law, provides as follows:

"When a person charged with the violation of sections 2151.01 to 2151.54, inclusive, of the Revised Code, has fled to another state or territory, and the governor has issued a requisition for such person, the board of county commissioners shall pay from the general expense fund of the county to the agent designated in such requisition all necessary expenses incurred in pursuing and returning such prisoner."

These Sections may seem, at first glance, to create a highly complicated, and perhaps contradictory, scheme. A careful reading of the statutes and the context in which they are found, however, reveals that they are relatively simple in their terms and wholly compatible in their operation.

To begin with, a distinction should be noted between those situations in which the governor has issued a requisition for extradition and those in which such requisition was rendered unnecessary by waiver of extradition.

1. In the latter situation, reimbursement for expenses incurred in returning a felon may be made pursuant to either Section 307.50 or Section 2335.10. Neither requires a requisition for extradition by the governor as a condition precedent to reimbursement for expenses incurred.

Prior to a 1963 amendment, which added the provision concerning waiver of extradition, reimbursement could not be made pursuant to Section 307.50, unless the governor had first issued a requisition for extradition. Consequently, expressions in Opinions issued by my predecessors prior to the 1968 statutory amendment, to the effect that a requisition for extradition is, in all cases, necessary for payment under Section 307.50, are currently inapplicable. See Opinion No. 7308, Opinions of the Attorney General for 1956; Opinion No. 1477, Opinions of the Attorney General for 1957.

It should also be noted that the confusion that might be expected with two different statutes governing the same situation, proves to be largely illusory. As a practical matter the choice of one Section over the other is quite inconsequential, for both provide for payment by the board of county commissioners.

I conclude, therefore, that if the accused has waived formal extradition, reimbursement for any necessary expenses incurred in

effecting his return are to be paid from the county treasury pursuant to either Section 307.50 or Section 2335.10. Both Sections use the language, "may" be paid. It is well settled, however, that the word "may" means "must" where, as here, a matter of public interest is involved. The Pennsylvania Rd. Co. v. Porterfield, 25 Ohio St. 2d 223, 226 (1971); Opinion No. 72-098, Opinions of the Attorney General for 1972. This seems to have been my predecessors' understanding of these two Sections. See, e.g. Opinion No. 3186, Opinions of the Attorney General for 1940, at page 1141.

2. In the event that the governor is required to seek extradition, however, a slightly different method of reimbursement is provided.

Once again, the general provision for expenses incurred is found in Section 307.50, which authorizes reimbursement by the board of county commissioners, both when extradition has been waived by the accused and when the governor has issued a requisition for extradition.

Reimbursement could also be made pursuant to Section 2151.45 when a violation of the juvenile court law is involved, but unlike Section 307.50, recovery under Section 2151.45 is possible only after the governor has issued a requisition for extradition. In Opinion No. 7308, supra, my predecessor said:

"When an individual charged with a felony in this state or a child charged with juvenile delinquency in this state is arrested and detained by the officers of another state and such individual or child is returned to this state without the issuance of a requisition by the governor, the fees charged by the officers of such other state for such arrest and detention may not be paid under the provisions of Sections 2151.45, Revised Code."

(Emphasis added.)

The difference appears in Section 2963.22, which authorizes payments of certain expenses from the state treasury, but only when the governor has formally requested that a fugitive be extradited from another state. Compare Opinion No. 2021, Opinions of the Attorney General for 1940, with Opinion No. 3186, supra. In its original form, as Section 109-24 of the General Code, the Section contained some unfortunately broad language, susceptible of the interpretation that all expenses in connection with the delivery of a prisoner upon extradition must be paid from the state treasury. Any possible confusion has, however, been clarified by prior Opinions of my predecessors and by the present clear language of Section 2963.22.

In Opinion No. 1236, Opinions of the Attorney General for 1937, my predecessor explained the scope of Section 109-24, General Code, as follows:

"Section 109-24, supra, as recently enacted, in the first sentence provides in broad language that the expenses incurred in extradition cases 'shall be paid out of the state treasury.' But the second sentence of this section defines what such expenses shall include-- that is to say, such expenses as are paid directly in the first instance from the state treasury shall be, first, fees paid to officers of the foreign state, and second, 'not exceeding ten cents a mile for all necessary travel in returning such prisoner.' * * *"(Emphasis added.)

Because the present Section 2963.22 is so limited in its scope, it is clear that its provision for payment of only specified expenses from the state treasury is wholly compatible with the provision of Section 307.50, authorizing reimbursement for all other expenses from the county treasury. My predecessor decided, and I agree, that the two statutes are neither repugnant nor irreconcilable. In Syllabus No. 3 of Opinion No. 1236, supra, he held as follows:

"Section 109-24, General Code [now Section 2963.22, Revised Code], authorizing the payment of certain expenses in extradition cases out of the state treasury in the first instance does not repeal by implication the provisions of Section 2491, General Code [now Section 307.50, Revised Code] relating to such expenses as may be paid out of the treasury of a county."

Although the question has never really arisen, it should be further noted that Section 2963.22 does not conflict with Section 2151.45 either. Section 2151.45 stands in precisely the same relation to Section 2963.22 as does Section 307.50. Section 2963.22, by its terms, applies whenever a governor has issued a requisition for extradition. Once such requisition is issued, reimbursement for the two enumerated expenses will be made from the state treasury, irrespective of whether reimbursement for general expenses is made from the county treasury pursuant to Section 307.50 or Section 2151.45.

To summarize, when a requisition for extradition has been issued by the governor, all expenses incurred in effecting the return of the accused will be reimbursed from the county treasury pursuant to either Section 307.50 or Section 2151.45, with the exception of fees paid to the officers of the foreign state, and any necessary travel expenses up to ten cents a mile, which will be paid out of the state treasury pursuant to Section 2963.22.

In specific answer to your question it is my opinion, and you are so advised, that:

1. When an accused has waived formal extradition, reimbursement for any expenses that may be incurred in effecting his return must be paid from the county treasury pursuant to either Section 307.50 or Section 2335.10, Revised Code.

2. When a requisition for extradition has been issued by the governor, all expenses incurred in effecting the return of the accused must be reimbursed from the county treasury pursuant to either Section 307.50 or Section 2151.45, Revised Code, with the exception of fees paid to the officers of the foreign state, and any necessary travel expenses up to ten cents a mile, which must be paid out of the state treasury pursuant to Section 2963.22, Revised Code.