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CRIMINAL LAW—FELON PLACED ON PROBATION—FLEES THE STATE—COSTS OF EFFECTING RETURN— §§ 307.50, 2335.10 RC—EXTRADITION PROCEEDINGS—COSTS OF EFFECTING RETURN UNDER EXTRADITION; § 2949.18 RC—NO REIMBURSEMENT OF COUNTY WHEN FELON RETURNED AND PLACED IN STATE INSTITUTION UNLESS EXTRADITION PROCESS IS FOLLOWED—§ 2949.18 RC.

SYLLABUS:

1. A person convicted of a felony in this state who has been placed on probation and imposition of sentence suspended during the period of probation and who, during such probationary period, violates its conditions and flees the state, may be apprehended and returned to the state for further disposition by the trial court.

2. If, following his apprehension and return, the convicted felon is restored to probation and the imposition of sentence is further suspended, the expenses incurred in his apprehension and return may not be included in the criminal cost bill but must be borne by the county probation department, as part of its administrative expense.

3. If, following his apprehension and return as a probation violator the convicted felon's probation is terminated and he is sentenced to a state penal or reformatory institution, so much of the expenses of his apprehension and return as are considered by the county commissioners to be necessary and just may be allowed by them for payment from the county treasury under the provisions of either Section 307.50, Revised Code, or Section 2335.10, Revised Code.

4. If the expenses incurred in the apprehension and return of a convicted felon after being placed on probation and before sentence and allowed by the county commissioners were incurred following extradition proceedings wherein the governor issued his requisition for the interstate rendition of the fugitive to the governor of the state of refuge, or requested the president of the United States to issue extradition papers to the sovereign of another country, the amount allowed and paid by the county for such apprehension and return, or so much of it as is found to be correct and necessary, should be allowed under Section 307.50, Revised Code, and included in the criminal cost bill to be paid to the county by the auditor of state on his warrant drawn on the treasurer of state under Section 2949.18, Revised Code.

5. If the expenses incurred as above stated were incurred in a case where extradition was waived by the fugitive and no action was taken by the governor under the extradition laws. or in a case where no such action was taken until after the actual return of the fugitive to Ohio was effected, regardless of how it was effected, then the expenses incident to such apprehension and return may be allowed by the county commissioners under Section 2335.10, Revised Code, but they may not be included in the criminal cost bill nor may the county be reimbursed for them by the state.

Columbus, Ohio, December 27, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“We have been presented with bills for the cost of transportation to return persons from other states, who have been convicted of crimes in Ohio, placed on probation and broke the terms of their probation. We have no question regarding the court costs of the conviction when the person involved enters the penal institution. We only question the cost of transportation to return those persons to Ohio since these costs resulted from the fact that these persons were placed upon probation by the court.

“We are cognizant of Sections 2963.21 and 2963.22, Revised Code. In the cases mentioned above, the persons involved waived extradition and the signed waivers are on file in the Governor’s office. Extradition papers were not secured from the Governor.”

Two questions are posed by this request.

(1) Are the costs of returning a probation violator to Ohio from another state properly chargeable as part of the court costs in his criminal case for which the county wherein he was convicted may be reimbursed by the state under Section 2949.18, Revised Code?

(2) May the state, under Section 2949.18, Revised Code, reimburse the county wherein conviction was had in a criminal case for the court costs including the expense of the return of the convicted person to Ohio from outside the state as a probation violator, if such return is based on a waiver of extradition without the issuance of a requisition for interstate rendition by the governor of Ohio under the provisions of Section 2963.21, Revised Code?

In this opinion I make two assumptions: First, that the cases you refer to are ones in which the accused person was convicted of a felony under the laws of Ohio. This opinion is limited to such cases.

Second: That the probation violator, when returned to Ohio, was sentenced to a penal or reformatory institution and not merely restored to probation. In the latter case, the expense of his apprehension and transportation home, together with the expenses of the probation officer who effected his return, would be an expense of the probation department of the county and not a legitimate item of the court costs of conviction.

The establishment of a county or multi-county department of probation for the supervision of convicts on probation or parole is made permissive by the provisions of Section 2301.27 *et seq.*, Revised Code.

The last paragraph of this section provides as follows:

“Probation officers shall, in addition to their respective salaries, receive their necessary and reasonable traveling and other expenses incurred in the performance of their duties. Such salaries and expenses shall be paid monthly from the county treasury in the manner provided for the payment of the compensation of other appointees of the court.”

The laws concerning court costs in felony cases, pertinent to your inquiry, are set forth in the following quoted sections of the Revised Code:

Section 2949.14.

“Upon sentence of a person for a felony, the clerk of the court of common pleas shall make and certify under his hand and seal of the court, a complete itemized bill of the costs made in such prosecution, including the sum paid by the board of county commissioners, certified by the county auditor, for the arrest and return of the convict *on the requisition of the governor, or on the request of the governor to the president of the United States.* Such bill of costs shall be presented by such clerk to the prosecuting attorney, who shall examine each item therein charged and certify to it if correct and legal.” (Emphasis added)

Section 2949.18.

“When the clerk of the court of common pleas certifies on a cost bill that execution was issued under section 2949.15 of the Revised Code, and returned by the sheriff ‘no goods, chattels, lands, or tenements found whereon to levy,’ the person in charge of the penal institution to which the convicted felon was sentenced shall certify thereon the date on which the prisoner was received at the institution and the fees for transportation, whereupon the auditor of state shall audit such cost bill and the fees for transportation, and issue his warrant on the treasurer of state for such amount as he finds to be correct.”

Holding in mind the two assumptions stated earlier in this opinion, the first question raised by your request is answered by an opinion rendered by one of my predecessors and reported in Opinion No. 4702, Opinions of the Attorney General for 1942, page 1, the syllabus of which is as follows:

“The liability of the state for criminal costs, under the provisions of section 13455-5 (Sec. 2949.16 R. C.) and cognate sections of the General Code, is not altered by the fact that a court, after having placed a person convicted of a felony on probation, terminates such probation before the expiration thereof and sentences such person to the penitentiary or reformatory.”

I concur in this opinion. The probation system is an essential, humane and important part of our criminal law and in many cases is a more effective implement of the control and prevention of crime than is commitment to and imprisonment in a penal or reformatory institution.

The fact that a person who was convicted of a felony was placed on probation by the court and imposition of sentence suspended during the probationary period does not relieve the state of its obligation to reimburse the county for the legitimate costs of the prosecution, including proper costs for transportation of the convicted person and the expenses of the officer effecting his return to the trial court in a case of violation of the terms of probation, under Section 2949.18, Revised Code, if, because of such violation, the probation is revoked and thereafter sentence for a felony is imposed. However, it must be noted, such transportation costs must be incurred in conformity with law if the county is to be reimbursed by the state. This is further discussed in answer to the second question raised.

Answering the second question posed by your request, the board of county commissioners of the county where a person is charged with or convicted of a felony, may pay all necessary and just expenses of pursuing and returning such person who has “fled the country.” On this point, two sections of the code are applicable.

Section 307.50, Revised Code, provides:

“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*, the board of county commissioners may pay, from the county treasury to the agent designated

in such requisition or request to execute them, all necessary expenses of pursuing and returning the person so charged, or so much of such expenses as to it seems just." (Emphasis added)

Section 2335.10, Revised Code, provides:

"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 fled the country."

You will note that Section 307.50, Revised Code, above quoted, differs from Section 2335.10, Revised Code, in one particular. Section 307.50, Revised Code, relates only to a case where the governor has acted, either by requisition or request. Section 2335.10, Revised Code, relates to all cases of pursuit of a felon who has fled the country, whether or not the governor has acted.

Referring again to Section 2949.14, Revised Code, heretofore quoted, it is evident that the cost bill certified by the clerk of courts may only contain as part of the costs the sum paid by the county commissioners for the arrest and return of the convict on the requisition or request of the governor. Only such certified cost bill may be honored by the auditor of state for draft on the treasurer of state to reimburse the county under Section 2949.18, Revised Code.

This question has been presented to my predecessors in office on several occasions and has been the subject of the following opinions, the pertinent parts of which are quoted for your information and concurred in by me.

Opinion No. 323, Opinions of the Attorney General for 1915, page 632:

"The expenses of an officer in returning from another state, without requisition, a person under indictment, are payable under section 3015, G. C. (Sec. 2335.10, R. C.) * * *."

In the request for the above opinion the writer inquired whether the expenses incurred by a deputy sheriff in returning a person charged with a felony to Ohio from another state, extradition having been waived, may be allowed by the county commissioners under section 2491, General Code, Section 307.50, Revised Code. The opinion, in answering this specific question said:

“It is my opinion that under said section it is necessary that a requisition shall issue before the commissioners may pay anything thereunder.”

Opinion No. 1605, Opinions of the Attorney General for 1918, Volume 2, page 1500, syllabus :

“Section 13,722 G. C. authorizes the payment of costs covering the arrest and return of a prisoner from outside of Ohio only when such arrest and return have been made upon the requisition of the governor.”

“If the prisoner has been returned to Ohio prior to either the time of the application for the extradition papers or the issuing of the same, the state is not authorized to pay the cost of the arrest and return.”

The latest, and therefore the most authoritative opinion of the Attorney General on this question is found in Opinion No. 2021, Opinions of the Attorney General for 1940, page 285, in which it is said, syllabus :

“1. Where a person, who has been charged with and convicted of a felony and sentenced to a state penal or reformatory institution, and before his imprisonment in such institution, escapes from the county jail and flees to another state or country and is there apprehended, the expenses of a county sheriff or his deputies in returning such person to the county where such escape was affected *may not lawfully be paid directly from the state treasury, unless such person be requisitioned by the Governor* under and in accordance with the provisions of the “Uniform Criminal Extradition Act. (Emphasis added)

“2. Under the facts stated in branch 1 of this syllabus, county commissioners may, pursuant to the provisions of Section 3015, General Code (2335.10 R. C.) allow and authorize payment from the county treasury, of the necessary expenses incurred by an officer in the pursuit or return of a person charged with a felony who had fled the country, even though such person may have been convicted of a felony with which he was charged and sentenced to a penal or reformatory institution of the state of Ohio, and escaped from the county jail before his transfer to and imprisonment in a state penal or reformatory institution.”

In the body of this opinion, at page 288, the then Attorney General said :

“* * * I find nothing in any other section of the General Code, or in the existing General Appropriation Act authorizing or permitting payment from the state treasury by the state or any of its departments, of expenses of the kind here under considera-

tion. And since the legislature has not authorized such withdrawals from the state treasury, except when persons are extradited upon requisition of the Governor as provided by law, no disbursement of state funds may be made to cover the expenses about which you inquire."

At page 290 of the above opinion it is held :

"Clearly, under this section (13455-3, G. C., 2949.14 R. C.) only such moneys as may have been paid by the county commissioners for 'the arrest and return of the convict *on the requisition' or request of the Governor* may be included in the bill of costs to be paid to the county by the state." (Emphasis added)

I concur in the foregoing opinions and the reasoning behind them. I realize that the return to Ohio of a felon, charged or convicted in this state, by a waiver of extradition is both economical and legal. The expense of return in such a case, it would seem, might properly be borne by the state; but under existing law it appears clear that it cannot, but must be borne by the county wherein the conviction was had. Only legislative action can correct this.

It is therefore my opinion and you are accordingly advised that :

1. A person convicted of a felony in this state who has been placed on probation and imposition of sentence suspended during the period of probation and who, during such probationary period, violates its conditions and flees the state, may be apprehended and returned to the state for further disposition by the trial court.

2. If, following his apprehension and return, the convicted felon is restored to probation and the imposition of sentence is further suspended, the expenses incurred in his apprehension and return may not be included in the criminal cost bill but must be borne by the county probation department, as part of its administrative expense.

3. If, following his apprehension and return as a probation violator the convicted felon's probation is terminated and he is sentenced to a state penal or reformatory institution, so much of the expenses of his apprehension and return as are considered by the county commissioners to be necessary and just may be allowed by them for payment from the county treasury under the provisions of either Section 307.50, Revised Code, or Section 2335.10, Revised Code.

4. If the expenses incurred in the apprehension and return of a convicted felon after being placed on probation and before sentence and allowed by the county commissioners were incurred following extradition proceedings wherein the Governor issued his requisition for the interstate rendition of the fugitive to the governor of the state of refuge, or requested the president of the United States to issue extradition papers to the sovereign of another country, the amount allowed and paid by the county for such apprehension and return, or so much of it as is found to be correct and necessary, should be allowed under Section 307.50, Revised Code, and included in the criminal cost bill to be paid to the county by the auditor of state on his warrant drawn on the treasurer of state under Section 2949.18, Revised Code.

5. If the expenses incurred as above stated were incurred in a case where extradition was waived by the fugitive and no action was taken by the Governor under the extradition laws, or in a case where no such action was taken until after the actual return of the fugitive to Ohio was effected, regardless of how it was effected, then the expenses incident to such apprehension and return may be allowed by the county commissioners under Section 2335.10, Revised Code, but they may not be included in the criminal cost bill nor may the county be reimbursed for them by the state.

Respectfully,
WILLIAM SANBE
Attorney General