

2021.

EXTRADITION—WHERE PRISONER ESCAPES FROM COUNTY JAIL AND FLEES TO ANOTHER STATE OR COUNTRY—PRISONER CHARGED WITH AND CONVICTED OF FELONY—SENTENCED TO STATE PENAL OR REFORMATORY INSTITUTION—EXPENSES OF SHERIFF OR DEPUTY FOR RETURN OF PRISONER — MAY NOT BE PAID FROM STATE TREASURY — EXCEPTION, REQUISITION OF GOVERNOR UNDER “UNIFORM CRIMINAL EXTRADITION ACT”—STATUS WHEN COUNTY COMMISSIONERS MAY ALLOW AND PAY SUCH EXPENSE FROM COUNTY TREASURY—QUERY: CHARACTER OF SERVICES, PORTER, WAITER OR OTHER PERSON, EXPENSES, MAY OR MAY NOT BE LAWFULLY CHARGEABLE AGAINST STATE OR OTHER POLITICAL SUBDIVISION.

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 effected 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" (Sections 109-1 to 109-31 of the General Code inclusive).*

2. *Under the facts stated in branch 1 of this syllabus, county commissioners may, pursuant to the provisions of Section 3015, General Code, 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.*

3. *Money paid to a porter, waiter or other person rendering like services may or may not be an expense lawfully chargeable against the state or one of its political subdivisions, depending upon the character of service rendered and whether the doing of that, for which money was given, was or was not a part of such person's duties under his employment. (Opinion No. 217, Annual Reports of the Attorney General, Vol. 1, 1912, p. 111, approved and followed.)*

Columbus, Ohio, March 14, 1940.

Honorable Charles L. Sherwood,
Director, Department of Public Welfare,
Columbus, Ohio.

Dear Sir:

Your recent request for my opinion reads as follows:

"Enclosed is a letter from the office of the Cuyahoga County Sheriff enclosing expense accounts for the return of a prisoner from

Georgia. You will note that this prisoner escaped from the Cuyahoga County jail after he had been sentenced to serve an indeterminate period at Mansfield. It seems to us that since he was not a prisoner in one of our institutions, this cannot be paid out of Welfare funds.

Will you please let us have your opinion in this matter?"

The letter from the Sheriff of Cuyahoga County transmitted with your request reads:

"We are attaching daily expense accounts in triplicate covering the expenses incurred in returning prisoner W. G. from Federal Penitentiary at Atlanta, Georgia, to Mansfield Reformatory. Receipt for the prisoner from the Reformatory is also enclosed.

For your information, W. G. escaped from the Cuyahoga County Jail on November 14, 1936, after he had been sentenced to serve an indeterminate period at Mansfield. A copy of the Journal Entry, certified by the Clerk, is enclosed. This office obtained custody of the prisoner in accordance with Section 109-23 of the Ohio General Code."

The journal entry referred to in the letter from the sheriff shows that on November 14, 1936, W. G. was sentenced to the Ohio State Reformatory "for an indeterminate period" by the Court of Common Pleas of Cuyahoga County, after having pleaded guilty to the offense of "automobile stealing."

There are also enclosed with your letter slips showing itemized expenses for two deputies and W. G., for dates including February 7 to 14, 1940, in the total amount of \$172.55, \$85.20 of which was for automobile hire (1614 miles at five cents a mile) and \$7.50 covered gratuities.

You will note that it is stated that the sheriff's office "obtained custody of the prisoner in accordance with Section 109-23 of the Ohio General Code". This section is a part of the new "Uniform Criminal Extradition Act" (Sections 109-1 to 109-31, General Code, inclusive) and reads in part as follows:

* * *

"When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county, from which the escape was made, shall present to the governor a written application for a requisition for the return of such

person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies * * * of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition."

Section 109-24, General Code, provides for the payment of costs and expenses in extradition cases, and reads as follows:

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

There is nothing in your request or the enclosures forwarded therewith to show that the provisions of Section 109-23, General Code, were followed in the case of the prisoner in question, and I am informed by the Executive Secretary in the office of the Governor that no extradition proceedings were had in W. G.'s case. Section 109-24, General Code, is, therefore, without application here. Moreover, I find nothing in any other section of the General Code, or in the existing General Appropriation Act (House Bill No. 674, 93rd General Assembly) authorizing or permitting payment from the State Treasury, by the State or any of its departments, of expenses of the kind here under consideration. 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.

In this connection, however, your attention is invited to Section 3015, General Code, which reads as follows:

"The county commissioners may allow and pay the necessary

expense incurred by an officer in the pursuit of a person charged with felony, who has fled the country.”

I am of the opinion that this section was not repealed by the Criminal Extradition Act.

In Opinion No. 1236, Opinions, Attorney General, 1937, Vol. III, p. 2124, it was held as follows in the third branch of the syllabus:

“Section 109-24, General 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, relating to such expenses as may be paid out of the treasury of the county.”

Section 2491, General Code, has to do with the payment by county commissioners from the county treasury to an agent designated to execute a requisition issued by the Governor for the return of a person charged with a felony, who has fled to any other state, territory or country, of “all necessary expenses of pursuit and returning such person so charged or so much thereof as to them seems just.” I concur in the third branch of the syllabus of Opinion 1236, *supra*; and certainly, if Section 2491 were not repealed by implication by the Uniform Criminal Extradition Act, Section 3015, which is a general section, relating to the pursuit of a person charged with a felony without the issuance of a requisition by the Governor, was not repealed by said act.

It will be observed that the language of Section 3015, *supra*, is limited to “the pursuit of a person *charged with felony*, who has fled the country,” and it might be argued from this language that expenditures under this section are limited to cases where the person is merely charged with a felony as distinguished from one who has been charged and convicted thereof. I am not unmindful, of course, of the rule that in case of doubt “as to the right of an administrative board to expend public moneys under legislative grant, such doubt must be resolved in favor of the public and against the grant of power” (See *State ex rel. v. Pierce*, Auditor, 96 O. S. 44 (1917)). It seems to me, however, that this principle has no application here and that the words “a person *charged with felony*, who has fled the country,” include such a person before or after his trial and conviction. After all, statutes must be given a reasonable interpretation and construction so as to carry into effect the intention of the Legislature and not to produce an absurd result. Manifestly, if it be for the public weal to provide for the return to this state of persons

charged with a felony, how much more important it is to make provisions for the return of persons who have been charged with a felony and convicted thereof and sentenced therefor. See 37 O. Jur. 643, 657.

The views herein expressed are in accord with the conclusions of Opinion No. 323, Opinions, Attorney General, 1915, Vol. I, p. 632, the syllabus of which reads as follows:

“The expense of an officer in returning from another state, without requisition, a person under indictment, are payable under section 3015, G. C., and not under section 3004, G. C.”

In the opinion proper it was pointed out that Section 2491, General Code, has to do with the return of any person charged with a felony where the Governor had issued a requisition for such person and that Section 3004, General Code, makes provision for the allowance to the prosecuting attorney of a fund “to provide for expenses which may be incurred by him in the performance of his official duties and in furtherance of justice, *not otherwise provided for,*” and held that the “person sent, as stated by you in your inquiry,” was a deputy sheriff—therefore an officer,” and that Section 3015, General Code, authorized the payment of such expenses by the county commissioners. See also Opinion No. 526, Opinions, Attorney General, 1917, Vol. II, p. 1495, in which opinion No. 323, *supra*, was approved and followed.

Your attention is also invited to Section 13455-3, General Code, pertaining to cost bills in felony cases, which provides in part that:

“Upon sentence of a person for a felony, the clerk 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 county commissioners, duly 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. * * **” (Emphasis the writer’s.)

Clearly, under this section, 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.

In view of the fact that there is no statutory authority for the payment of the expenses of the kind here involved directly from the state treasury, I deem it unnecessary to give any consideration to the fact that, while W. G.

had been sentenced to the Ohio State Reformatory, he had not been received at such institution and had not become a prisoner in the custody of the state.

In passing, since, as above stated, the expense account submitted includes so-called "gratuities" in the sum of \$7.50, I deem it proper to invite your attention to Opinion No. 217, reported in Annual Reports of the Attorney General for 1912, Vol. I, p. 111, in which it was held as follows:

" * * * 'tip' is defined as a gift or gratuity and the Century Dictionary defines it as a donation to one for some service or pretended service while in the employ of another and for which the employer makes payment. In any light it is a gratuity or donation to one who is ready and willing to receive but who confessedly has no right to demand, and therefore cannot be considered as an expense chargeable to the state as other expenses may be.

Money paid to a porter may or may not be a legal expense, depending upon the character of service rendered and whether the doing of that for which money was given was, or was not, a part of his duties under his employment."

In view of the foregoing, it is my opinion, and you are accordingly advised, that:

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 effected 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" (Sections 109-1 to 109-31 of the General Code, inclusive).

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

3. Money paid to a porter, waiter or other person rendering like services may or may not be an expense lawfully chargeable against the state or one of its political subdivisions, depending upon the character of service rendered and whether the doing of that, for which money was given, was or was not a part of such person's duties under his employment. (Opinion No. 217, Annual Reports of the Attorney General, Vol. 1, 1912, p. 111, approved and followed).

The papers submitted with your inquiry are herewith returned.

Respectfully,

THOMAS J. HERBERT,
Attorney General.