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1. FEES CHARGED BY OFFICERS OF ANOTHER STATE — ARREST AND DETENTION — MAY NOT BE PAID WITHOUT ISSUANCE OF A REQUISITION — SECTIONS 307.50, 2151.45 R. C.
2. FEES FOR ARREST AND DETENTION OF INDIVIDUAL CHARGED WITH FELONY PAID BY COUNTY COMMISSIONERS—SECTION 2335.10 R. C.
3. FEES FOR APPREHENDING AND DETAINING CHILD CHARGED WITH JUVENILE DELINQUENCY PAID FROM DELINQUENT CHILDREN FUNDS—SECTION 2151.10 R. C.

SYLLABUS:

(1) 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 307.50 or 2151.45, Revised Code.

(2) When an individual charged with a felony in this state is arrested and detained by the officers of another state and such individual is returned to this state without the issuance of a requisition by the governor, the board of county commissioners of the county which sought his return and to which he is returned may, under the provisions of Section 2335.10, Revised Code, allow and pay to the officers of such other state the fees charged by such officers for arresting and detaining such individual.

(3) When a child charged with juvenile delinquency in this state is apprehended and detained by the officers of another state and such 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 apprehending and detaining such child may be paid from the funds appropriated under Section 2151.10, Revised Code for the care of delinquent children.

Columbus, Ohio, October 26, 1956

Hon. Joseph W. McNerney, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Recently it was necessary for our Sheriff’s Department to go to the State of Florida to return to our county four individuals, three of whom were wanted upon a charge of juvenile delinquency

and one of whom was wanted for a felony charge. The juvenile delinquency charges grew out of a breaking and entering, which would be a felony had the individuals been adults.

“Under the method of appropriation of funds in this county, funds are appropriated by the commissioners to the Prosecuting Attorney to pay the expenses of returning prisoners under Revised Code Section 307.50. Also significant in the Juvenile Case is Revised Code Section 2151.45. Both sections provide in part that in going to another state for prisoners, the Board of County Commissioners may pay, from the County Treasury, all necessary expenses of pursuing and returning the persons so charged.

“Upon return to our county our Sheriff’s Deputies presented four bills from the Florida Sheriff for the expense of apprehending the prisoners and their board while they were incarcerated in Florida jails. It seems that in the State of Florida as in some other southern states, these officers do not receive a salary, but rather receive fees for their official duties.

“The question that this office would like answered and which we believe to be significant to all counties in the state, is whether we may pay from our funds, under the above sections, the expense of arrest and board of prisoners to the officers of another state.”

In reply to my inquiry you stated that the circumstances of the arrest and return of these persons were that they were arrested for investigation by officers of the state of Florida, upon learning of their whereabouts your county issued a warrant, and they waived extradition.

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.”

Section 2151.45, Revised Code, provides :

“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.”

Section 2963.22, Revised Code, provides :

“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.”

In each of these sections, requisition by the governor is a condition precedent to the payment. It is my opinion that no payment may be made under the terms of Sections 307.50, 2145.45 and 2963.22, Revised Code, either to the agents designated to receive and return persons charged, or to the officers of another state, unless a requisition has been made in accordance with the provisions of Section 2963.22, Revised Code. Accordingly, it is necessary to look elsewhere for the authority to pay these fees.

Considering first the fugitive charged with a felony, I call your attention to Section 2335.10, Revised Code, which reads 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 fled the country.”

Your question then becomes whether or not the fees of officers of other states may be considered a part of the necessary expense of pursuing a felon. In Opinion No. 2021, Opinions of the Attorney General for 1940, page 286, it was held that under this section—then Section 3015, General Code—there might be allowed, as an expense, money used to pay a “tip” or gratuity to a waiter or porter, depending on the nature of his services. There could be no question, I should think, that the cost of feeding and housing a prisoner during his return is a necessary expense. It seems to me that if the county is authorized to reimburse the pursuing officer for an expense he incurred by utilizing the services of a waiter or porter, then certainly it can allow as an expense the amount of the fees of an officer of another state who performed the essential service of apprehending the fugitive. And if the cost of feeding and housing a prisoner during his return is an expense, then logically the cost of his board in jail after capture and while awaiting return is an expense. It is my opinion that these fees may be paid, in the case of the fugitive charged with a felony, under the provisions of Section 2335.10. Inasmuch as the other fugitives were not charged with felonies but with juvenile delinquency, the fees with regard to them may not be paid under this section.

Section 2151.10, Revised Code provides :

“The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the juvenile court, including reasonable expenses of the juvenile judge and such officers and employes as he may designate in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education, and support of neglected, dependent, and delinquent children, other than children entitled to aid under sections 5107.01 to 5107.16, inclusive, of the Revised Code, and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, dependent, or delinquent children. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to the judge.”

There can be no question, as it appears to me, that the cost of pursuing and returning fugitive children is one of the necessary expenses of their “care” in those cases where the child has been adjudged delinquent, or as an item of “administrative expense” of the court in any such case, even in the absence of such adjudication. Following the reasoning of the paragraphs above, the fees of the officers of other states who apprehend and detain fugitive children are among the expenses of pursuing and returning them. It is my opinion, therefore, that such fees may be paid from the funds appropriated for the juvenile court under Section 2151.10.

In sum, it is my opinion, and you are advised :

(1) 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 307.50 or 2151.45, Revised Code.

(2) When an individual charged with a felony in this state is arrested and detained by the officers of another state and such individual is returned to this state without the issuance of a requisition by the governor, the board of county commissioners of the county which sought his return and to which he is returned may, under the provisions of Section 2335.10, Revised Code, allow and pay to the officers of such other state the fees charged by such officers for arresting and detaining such individual, where such arrest, or detention, or both, are made at the request of the Ohio authorities.

(3) When a child charged with juvenile delinquency in this state is apprehended and detained by the officers of another state and such 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 apprehending and detaining such child may be paid from the funds appropriated under Section 2151.10, Revised Code, where such apprehension, or detention, or both, are made at the request of the Ohio authorities.

Respectfully,

C. WILLIAM O'NEILL
Attorney General