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1. EXTRADITION — “UNIFORM CRIMINAL EXTRADITION ACT” — WHERE PRISONER CHARGED WITH CRIME ESCAPES FROM COUNTY JAIL—TAKEN INTO CUSTODY IN ANOTHER STATE — EXPENSE TO APPREHEND AND RETURN CRIMINAL LIMITED TO FEES PAID TO OFFICERS OF STATE ON WHOSE GOVERNOR REQUISITION MADE — TRAVEL NOT TO EXCEED TEN CENTS PER MILE — SUCH EXPENSES PAID OUT OF STATE TREASURY FROM LEGISLATIVE APPROPRIATION UPON CERTIFICATE OF GOVERNOR AND WARRANT OF AUDITOR —SECTION 109-24 G. C.
2. WHERE PRISONER SENTENCED TO STATE PENAL OR REFORMATORY INSTITUTION, ESCAPES FROM COUNTY JAIL, FLEES TO ANOTHER STATE OR COUNTRY — APPREHENDED — EXPENSE OF SHERIFF OR DEPUTIES FOR RETURN OF PRISONER MAY NOT BE PAID BY DEPARTMENT OF PUBLIC WELFARE — COUNTY COMMISSIONERS, COUNTY WHERE ESCAPE EFFECTED MAY ALLOW NECESSARY EXPENSES, JUST AMOUNT — SECTION 2491 G. C. — SEE OPINION 2021, MARCH 14, 1940, OPINIONS ATTORNEY GENERAL, PAGE 285.

SYLLABUS:

1. *Under the Uniform Criminal Extradition Act, the expenses incurred in apprehending and returning a criminal, or one charged with crime, who escaped from a county jail and was taken into custody in a sister state, are, by the express terms of Section 109-24, General Code, limited to “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.” Such expenses “shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor”, from the proper appropriation by the Legislature.*

2. *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 be paid by the Department of Public Welfare, but the allowance and payment of the necessary expenses incurred in apprehending and returning such prisoner, or such amount thereof as to them seems just, may, under the provisions of Section 2491, General Code, be allowed by the county commissioners of the county where the escape was effected.

Columbus, Ohio, December 31, 1940.

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

Dear Sir:

I have your letter of November 30, 1940, enclosing your "file on the case of the return of W— G— from Atlanta, Georgia, to Cuyahoga County, along with the letters" just received by you from Cuyahoga County.

In so far as the letters from the Sheriff of Cuyahoga County are concerned, it is necessary here only to quote the following:

"Regarding your letter of March 15, 1940, in which you return the expense accounts incurred in the return of W— G— from Atlanta, Georgia, to the Reformatory in Mansfield, Ohio, I am again taking the liberty of submitting these expenses to you for payment.

You enclose with your letter an opinion from the Attorney General's office which advised that your department does not pay these expenses, citing in substance two reasons for their opinion.

First, they contend that Section 109:23 of the General Code was not complied with due to the fact that no extradition papers in this case were obtained. Attached herewith please find the original extradition papers which were obtained from the Governor's office on February 1, 1940, for the return of W— G— to Ohio in compliance with Section 109:23 of the General Code.

Second, the Attorney General also refers to an opinion, No. 217, regarding gratuities. I have in accordance with this opinion eliminated gratuities from the expense account. I feel that Section 109:23 and Section 109:24 of the General Code have been complied with in this case and that your department will find itself legally justified in remitting a check for the expenses incurred.

Yours very truly,

MARTIN L. O'DONNELL,
Sheriff.

By: Chas. F. Wing, Auditor."

Among the other papers enclosed with your letter is a corrected invoice in the amount of \$165.05, gratuities in the sum of \$7.50 having been eliminated; the original extradition papers issued under date of February 1, 1940, by the Governor of Ohio, making requisition upon the Governor of Georgia for the apprehension and delivery of W— G— to Charles F. Wing, as the agent of Ohio; and a warrant issued on the same date by the Governor of Ohio, appointing Charles F. Wing "to be the Agent of this State," to receive and return W— G— to Cuyahoga County.

The opinion of this office referred to in the letter from the Cuyahoga County Sheriff is Opinion No. 2021, rendered to you under date of March 14, 1940. The first and second branches of the syllabus of this opinion read:

"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 the 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."

As shown by the facts upon which opinion 2021 was based, "W— G— escaped from the Cuyahoga County jail on November 14, 1936, after he had been sentenced to serve an indeterminate period at Mansfield".

In so far as the instant question is concerned, both the reasoning and conclusion of Opinion No. 2021 were predicated upon the fact that no extradition proceedings were had in W— G—'s case. As stated in the opinion:

"There is nothing in your request or the enclosures forwarded therewith to show that the provision 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."

I find no reason to change the above conclusions; but since the facts as now presented show that requisition for W— G— upon the Governor of Georgia was in fact issued by the Governor of Ohio, it becomes necessary to determine whether the result reached in the former opinion would be to the contrary by reason of this fact.

Section 109-24, General Code, which is a part of the "Uniform Criminal Extradition Act" (Sections 109-1 to 109-32, inclusive, of the General Code; 117 v. 588, Eff., 8-20-37), provides 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."

Obviously it was unnecessary to interpret or construe this section in Opinion No. 2021, for the manifest reason that such section has application only where the Governor of this state makes requisition upon the Governor of a sister state under the "Uniform Criminal Extradition Act". Upon the facts as submitted, it appeared that no such requisition had been made. The present request, together with the documents submitted therewith, shows that extradition proceedings were had, and it therefore becomes necessary to consider the provisions of Section 109-24, supra, and decide whether this section authorizes your department to pay from any funds appropriated to it by the Legislature the expenses with which we are here concerned. The answer must be in the negative.

You will observe that any expenses authorized to be paid under Section 109-24, supra, are to "be paid out of the state treasury, *on the certificate of the governor.*" And you will further note that by the express provisions of such section, there are two limitations on such expenses: First, they are confined to "the fees paid to the officers *of the state on whose governor the*

requisition is made," and, Second, they shall not exceed "ten cents a mile for all necessary travel in returning such prisoner." It is clear from this language that your department has nothing to do with the payment of the expenses provided for by Section 109-24, *supra*.

Moreover, an examination of the General Appropriation Act for the present biennium (H. B. No. 674, 93rd General Assembly) reveals that the Legislature made no appropriation to either the Governor or your department to cover expenses of this kind. And it is, of course, fundamental that no money may be drawn from the state treasury "except in pursuance of a specific appropriation, made by law" (Art. II, Sec. 22, Const.), for which reason, as well as for those above set forth, I adhere to the conclusion of Opinion No. 2021, that the expenses about which you inquire may not lawfully be paid directly from the state treasury.

In connection with the allowance and payment of the expenses in question, your attention is invited to Section 2491, General Code, which reads 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 has requested the president of the United States to issue extradition papers, the commissioners may pay from the county treasury to the agent designated in such requisition or returning to execute them, all necessary expenses of pursuing and returning such person so charged, or so much thereof as to them seems just." (Emphasis mine.)

This section was not expressly repealed in the Uniform Criminal Extradition Act or otherwise, although certain other sections were expressly repealed in such act, *viz.*, Sections 109 to 115, inclusive, and 1655-1, General Code.

Repeals by implication are never favored by the courts. As stated in Crawford's Statutory Construction, page 630 (citing *The State of Ohio v. Hollenbacher*, 101 O. S. 478 (1920)):

"As is thus apparent, the courts do not look with favor upon implied repeals, and the presumption is always against the intention of the legislature to repeal legislation by implication. The absence of an express provision in a statute for the repeal of a prior law gives rise to this presumption, which is accentuated where the various statutes were enacted at the same session of the legislature. Consequently, as we have already indicated, the intent to repeal must clearly appear, and such a repeal will be avoided if at all possible.

* * * Similarly, when a statute specifically repeals certain acts or parts of an act, it will not be presumed that the legislature intended to repeal any act or any part of an act not mentioned."

See also page 351, Black on Interpretation of Laws.

In view of this well settled rule of statutory interpretation, and especially since the Legislature did not see fit to make any appropriation to make effective the provision of Section 109-24, General Code, I am constrained to hold that all necessary expenses incurred in pursuing and returning W— G—, or so much thereof as to them seems just, should be allowed and paid by the county commissioners of Cuyahoga County from the county treasury.

A like conclusion was reached by my immediate predecessor in office in Opinion No. 1236, Opinions, Attorney General, 1937, Vol. III, p. 2124, the third branch of the syllabus reading as follows:

“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.”

In conclusion, and in specific answer to your question, it is my opinion that:

1. Under the Uniform Criminal Extradition Act, the expenses incurred in apprehending and returning a criminal, or one charged with crime, who escaped from a county jail and was taken into custody in a sister state, are, by the express terms of Section 109-24, General Code, limited to “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.” Such expenses “shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor”, from the proper appropriation by the Legislature.

2. 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 be paid by the Department of Public Welfare, but the allowance and payment of the necessary expenses incurred in apprehending and returning such prisoner, or such amount thereof as to them seems just, may, under the provisions of Section 2491, General Code, be

allowed by the county commissioners of the county where the escape was effected.

Your file, including all documents and papers, is returned herewith.

Respectfully,

THOMAS J. HERBERT,
Attorney General.