

March 4, 1959

**LAW LIBRARY  
ARIZONA ATTORNEY GENERAL**

Honorable James D. Hathaway  
Santa Cruz County Attorney  
Court House  
Nogales, Arizona

Dear Mr. Hathaway:

We acknowledge receipt of your letter of February 21, 1959, requesting the opinion of the Attorney General upon the question of the sheriff of Santa Cruz County receiving reimbursement for travel and subsistence expenses for travelling to a foreign state to return a fugitive to Santa Cruz County who has waived extradition in the foreign state.

Your letter cites A.R.S. § 38-621 and sections following, comprising Title 38, Chapter 4, Article 2, Arizona Revised Statutes. That Article expressly limits its application to a public officer, deputy or employee of the state or of any department, institution or agency thereof. The Article does not apply to county officers. Thus, it appears that we are required to consult A.R.S. § 11-444, which provides as follows:

" Expenses of sheriff as county charge; expense fund

A. The sheriff shall be allowed actual and necessary expenses incurred in pursuit of criminals, for transacting all civil or criminal business and for service of all process and notices, and such expenses shall be a county charge.

B. The board shall, at the first regular meeting in each month, set apart from the expense fund of the county, a sum sufficient to pay the estimated traveling and other expenses of the sheriff during the month, which shall be not less than the amount paid for the expenses for the preceding month. The sum so set apart shall thereupon be paid over to the sheriff for the payment of such expenses.

Honorable James D. Hathaway  
Santa Cruz County Attorney

March 4, 1959  
Page Two

C. At the end of each month the sheriff shall render a full and true account of such expenses, and any balance remaining unexpended shall be paid by the sheriff into the county treasury. If the sum so paid over is insufficient to pay the expenses incurred during the month, the excess shall be allowed and paid as other claims against the county."

A.R.S. § 13-1324 authorizes the county to reimburse persons employed by the governor in extradition proceedings who return a fugitive from a foreign state to this state.

The question remains, however, whether the sheriff may be reimbursed for expenses incurred in returning a fugitive from justice from a foreign state when the fugitive has waived extradition.

Apparently the decision of the Supreme Court in Maricopa County v. Norris, 49 Ariz. 323, 66 P.2d 258, forbids a sheriff from receiving such reimbursement unless the fugitive is returned under a writ of extradition, but not when the fugitive has waived extradition. The Supreme Court reaffirmed the decision in Maricopa County v. Norris, supra, in Ward v. Frohiller, 55 Ariz. 202, 209, 211, 100 P.2d 167; and Kerby v. State, 62 Ariz. 294, 157 P.2d 698.

The present status of the law in its relationship to the problem at hand appears to indicate that the sheriff, in order to secure reimbursement for the expenses incurred, should obtain a writ of extradition from the governor and return the fugitive from the foreign state armed with the writ, even in the instance where the fugitive has waived extradition.

Yours respectfully,

WADE CHURCH  
The Attorney General

LESLIE C. HARDY  
Chief Assistant  
Attorney General

LCH/lw