

ATTORNEY GENERAL OF ARIZONA  
STATE CAPITOL  
PHOENIX

March 28, 1922.

OPINION OF THE ATTORNEY GENERAL.

**Subject:** Interstate Extradition or Rendition.  
**Statutes & Laws:** Constitution of United States, Art. IV, Sec. 2, Par. 2; United States Revised Statutes, Secs. 5278 and 5279; United States Compiled Statutes, 1918, Secs. 10,126 and 10,127; Revised Statutes, Arizona, 1913, Penal Code, Title XXVI, Secs. 1413 to 1425, both inclusive.

INQUIRY.

To warrant a Governor in honoring a requisition for a fugitive from justice, what showing should be made?

OPINION.

The constitutional and statutory law upon the subject is rather brief, and, for convenience, we will refer to such parts thereof as relate to the Inquiry.

The foundation of the Law is in the United States Constitution, Article IV, Section 2, Paragraph 21, which reads as follows:

"A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the Executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime."

The acts of Congress on the subject are to be found in Sections 5278 and 5279, United States Revised

Statutes (Sections 10,126 and 10,127, U. S. Compiled Statutes, 1918) and are as follows:

"Section 5278. (10,126) (FUGITIVES FROM JUSTICE OF A STATE OR TERRITORY) Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory."

"Section 5279 (10,127) (PENALTY FOR RESISTING AGENT, ETC.) Any agent so appointed who receives the fugitive into his custody, shall be empowered to transport him to the State or Territory from which he has fled. And every person who, by force, sets at liberty or rescues the fugitive from such agent while so transporting him, shall be fined not more than five hundred dollars or imprisoned not more than one year."

There is no reference to the subject in the Constitution of Arizona, but, in the Penal Code of the Revised Statutes of Arizona, 1913, Title XXVI, consisting of Sections 1413 to 1425, both inclusive, is devoted to "Proceedings against Fugitives from Justice." The only sections of said Title that bear directly upon the Inquiry are 1414 and 1423, which read as follows:

"  
"1414. A person charged in any state of the United States with treason, felony or other crime, who shall flee from justice and be found in this state must, on demand of the executive authority of the state or territory from which he fled, be delivered up by the governor of this state, to be removed to the state or territory having jurisdiction of the crime."

"1423. The governor of this state may, in cases authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, or from the executive authority of any foreign government, any fugitive from justice, or person charged with treason."

The provisions in the Constitution of United States, as well as the Statutes, are somewhat general, but from them it will be seen that to obtain a surrender of a fugitive from another state there must be

- (1) A requisition or demand for the fugitive;
- (2) A copy of an Indictment found, or an affidavit made before a magistrate, charging the

person demanded with having committed a crime; and

(3) An authentication of the indictment or affidavit by the Governor or chief magistrate of the state from whence the person so charged has fled.

It will be noticed that neither the Constitution nor the Statutes make any mention of issuing a requisition based upon an information, but refer only to indictments and affidavits. If a requisition be based upon an information it should possess all the requisites of an affidavit.

Upon receipt of a requisition from the Governor of another state, we advise that it should be examined to see if it has

First: Been predicated upon a petition of the County or prosecuting attorney of the county where the crime is alleged to have been committed;

Second: Accompanied by a specific charge of crime in the form of a duly authenticated copy of--

- (a) An indictment found by a Grand Jury, or
- (b) An affidavit made before a magistrate, or
- (c) An information filed by the County or prosecuting attorney, accompanied with an affidavit made before a magistrate.

Third: Together with certain and positive proof, showing--

- (1) That the accused was personally present in the demanding state on the day and date when the

crime was committed;  
(2) That he has been found in the asylum state,  
and, therefore,  
(3) He is a fugitive from the jurisdiction of  
the state making the demand.

The act of Congress requires the Executive making the demand to furnish evidence of the charge, not to make the charge, and on such evidence to make the demand; and such evidence is to be of such a character as to satisfy the mind that the party has been legally charged in the courts of the state whence he fled with the crime for which it is sought to apprehend him.

That there might be uniformity of the States in the Rules of Practice governing applications for and the issuing of requisitions, a conference of Governors was called upon the invitation of Governor David B. Hill of New York, and held in New York in August, 1887, attended by representatives of some twenty-five states and territories. Rules of Practice in interstate rendition were adopted, and have been, in the main, approved and followed by the authorities of many of the states. They are as follows:

#### RULES OF PRACTICE.

"The application for the requisition must be made by the district (county) or prosecuting attorney for the county or district in which the offense was committed, and must be in duplicate original papers or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney:

(a) The full name of the person for whom extradition is asked, together with the name of the agent proposed, to be properly spelled, in capital letters--for example: JOHN DOE.

(b) That in his opinion the ends of public justice require that the alleged criminal be brought to this state for trial at the public expense.

(c) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f) If the fugitive is known to be under either civil or criminal arrest in the state or territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that, if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i) If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretenses, embezzlement, or forgery, when made a crime by the common law,

or any penal code or statute, the affidavit of the principal complaining witness or informant, that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit, of facts and circumstances satisfying the executive that the alleged criminal has fled from the justice of the state, and is in the state on whose executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the state where the alleged crime was committed at the time of the commission thereof, and is found in the state upon which the requisition was made, shall be sufficient evidence, in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies in duplicate must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that the accused perpetrated the same, must be shown by affidavits taken before a magistrate (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued, and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished upon an application.

5. THE OFFICIAL CHARACTER OF THE OFFICER TAKING THE AFFIDAVITS or depositions and of the officer who issued the warrants must be duly certified.

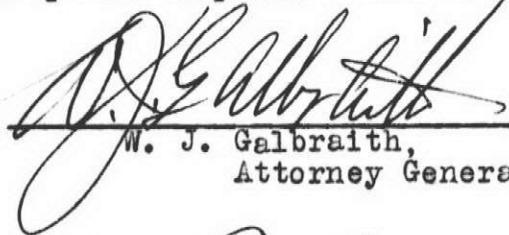
6. Upon the renewal of an application, for example, on the ground that the fugitive has fled to another state, not having been found in the state on which the first was granted, new or certified copies of the papers in conformity with the above rules must be furnished.

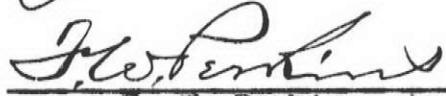
7. IN THE CASE OF ANY PERSON WHO HAS BEEN CONVICTED OF ANY CRIME AND ESCAPES AFTER CONVICTION, OR WHILE

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SERVING HIS SENTENCE, THE APPLICATION MAY BE MADE BY THE JAILOR, SHERIFF OR OTHER OFFICER HAVING HIM IN CUSTODY, AND SHALL BE ACCOMPANIED BY CERTIFIED COPIES OF THE INDICTMENT OR INFORMATION, RECORD OF CONVICTION AND SENTENCE UPON WHICH THE PERSON IS HELD, WITH THE AFFIDAVIT OF SUCH PERSON HAVING HIM IN CUSTODY, SHOWING SUCH ESCAPE, WITH THE CIRCUMSTANCES ATTENDING THE SAME.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules."

  
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FWP:HB