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ARIZONA ATTORNEY GENERAL

May 15, 1986

Mr. Samuel A. Lewis
Arizona Department of Corrections
1601 West Jefferson
Phoenix, Arizona 85007

Re: I86-052 (R86-049)

Dear Mr. Lewis:

You asked how the Department of Corrections can comply with a warrant that sets an execution date for a convict who was tried in Arizona pursuant to the Agreement on Detainers ("Agreement"), A.R.S. § 31-481, when the convict has been returned to the sending state. Because of the provisions of the Agreement, it is not possible for the Department to comply with the warrant at this time.

The language of the Agreement provides that the sending state's sentence must be completed first before the convict is returned to the receiving state (Arizona in this case). A.R.S. § 31-481, Art. III(e) states:

Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state

(Emphasis added.)

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That language is amplified by the language in Art. V:

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance [sic] at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

. . . .

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(Emphasis added.)

Pursuant to the Agreement then, the sending state does not relinquish its jurisdiction when it gives up temporary custody of the prisoner to the receiving state. Buchanan v. Hayward, 663 P.2d 70 (Utah 1983). The Agreement requires that the receiving state return the prisoner to the sending state immediately after his trial. Hearn v. State, 642 P.2d 757, 758 (Utah 1982).

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Because the Arizona warrant for execution cannot be executed until the prisoner serves the sentence imposed by the sending state, the only way to insure that the Arizona sentence will be carried out in the future is to place a detainer on that individual. It is not improper to shuttle prisoners back and forth by means of detainers to serve sentences in various jurisdictions. Hearn v. State, 642 P.2d at 759.

Sincerely,



BOB CORBIN
Attorney General

BC:DMR:jd