

**OPINION
69-75**

December 22, 1969 (OPINION)

Mr. John Hart

State's Attorney

Rolette County

RE: Civil Procedure - Juveniles - Extradition

This is in response to your letter of October 7, 1969, in which you state the following:

"For some time now I have been concerned relative to the increased frequency of the Rolette County Sheriff and the Rolette County Welfare Board returning to Rolette County from other states juveniles who are beneficiaries of the public welfare programs and who have allegedly committed in Rolette County acts of alleged delinquency. As State's Attorney, I request your office's OPINION on the following questions relative to this matter.

1. Does a North Dakota Sheriff by virtue of either verbal or written orders from a Juvenile Court Supervisor have authority to return to North Dakota from another state a juvenile where:
 - a. Extradition proceedings involving such juvenile have not been instituted pursuant to Chapter 29-30, N.D.C.C.?
 - b. Where the juvenile involved has executed a waiver of extradition after extradition proceedings have been instituted pursuant to Chapter 29-30, N.D.C.C.?
 - c. Where the United States Attorney has not surrendered such juvenile pursuant to Section 5001, Title 18, U.S.C.A.?
2. If the answer to any of the above three questions is 'YES', under which of these three situations would the County of Rolette be chargeable for the Sheriff's expense (including mileage and extra deputy) of returning such juvenile to the State of North Dakota?
3. Under what circumstances other than as provided by Section 5001, Title 18, U.S.C.A., can a County Sheriff, or Juvenile Court, or the State of North Dakota extradite from another state a person under twenty-one years of age, including, of course, a juvenile?

Basically the extradition is governed by Section 2, Article IV of the United States Constitution which, as is material here, provides 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."

"* * *."

It is thus observed that extradition applies only in instances where a person is charged with a crime. 35 C.J.S., EXTRADITION, Section 9, Page 839, specifically states that no person is subject to extradition until a criminal charge has been made against him by the appropriate authority, and the charge must be of a specific crime and not of an indefinite wrong.

The North Dakota Extradition Act, Chapter 29-30 of the North Dakota Century Code, speaks of persons charged with having committed a crime. The statutory provision where the demand is made upon this State requires that the person be charged with a crime, and the statutory provision where a demand or request is made by this State upon a sister State (asylum State) requires that the fugitive must be charged with a crime before the extradition processes are applicable. This establishes the firm conclusion that extradition processes are available only in instances where a person is charged with the commission of a crime.

The term "juvenile" is defined in the Interstate Compact Act but not the Uniform Juvenile Court Act, but we presume that you used the term "juvenile" in the same manner as such term is found in the Federal Code, specifically 18 U.S.C.A. 5001, and in the Interstate Compact Act. Such term is substantially the same as a "delinquent child", as defined in subsection 3 of Section 27-20-02 of the North Dakota Century Code, as amended, and Subdivision b. of subsection 1. thereof. Under the provisions of Chapter 27-20, which is the Uniform Juvenile Court Act, a delinquent child, or a child who has committed an act of delinquency before reaching the age of eighteen years, is not considered to have committed a crime as such term is generally and universally accepted. Consequently, a "delinquent child" who is not charged with the commission of a crime would not be subject to the extradition process. However, it is conceivable that a "delinquent child" might have committed a crime and for purposes of securing the custody of such child the extradition process may be used merely to bring such child into custody. Under such circumstances, however, if the child is apprehended and taken into custody it is also conceivable that the State in which it is taken into custody would have to immediately institute proceedings to determine whether or not juvenile jurisdiction would be waived. Such procedure would be the unusual and would, in effect, constitute an exception to the normal procedures to be followed, as later discussed herein.

We have now reached the rather firm conclusion that extradition processes are not available for the return of delinquent children, as defined in Chapter 27-20 of the North Dakota Century Code.

North Dakota has adopted the Interstate Compact on Juveniles. The term "juvenile" is defined to mean any juvenile who has been adjudged delinquent and is subject to the jurisdiction of the Court that has made such adjudication, or subject to the jurisdiction of or supervision of an agency or institution pursuant to such order. The term "juvenile" is substantially the same as the term "delinquent child", and for all practical purposes the two terms are interchangeable under the provisions of the Interstate Compact on Juveniles.

This State has executed a compact agreement and is a member of the Interstate Compact on Juveniles. All states except South Carolina, Georgia and New Mexico are members of the Interstate Compact.

The Interstate Compact sets forth the procedures to be followed in different situations. (See Section 27-22-02 of the North Dakota Century Code, as amended.) For example, Article IV under said section sets forth in detail the procedures to be followed in the return of run-a-ways as distinguished from juveniles or delinquent children. Article V sets forth the detailed procedure to be followed in the return of escaped or absconded delinquent juveniles. Article VI sets forth the procedure to be followed in a voluntary return of a delinquent juvenile or delinquent child. The foregoing statutory provisions, which are part of the Interstate Compact, would govern the procedures employed in returning certain persons. The facts would determine which provision would be applicable.

As to costs, Section 27-22-02 of the North Dakota Century Code makes reference to same in several instances. For example, Article IV, 2. provides as follows: "That the state to which a juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return"; Article V, 2. provides as follows: "That the state to which a delinquent juvenile is returned under this article shall be responsible for the payment of the transportation costs of such return"; and Article VII, 4. provides as follows: "That the sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state."

It is quite apparent from the foregoing that the State will be initially responsible for the costs as set forth in the aforementioned provisions. However, Article VIII, also pertaining to costs, seems to clarify the previous provisions and provides as follows:

1. That the provisions of articles IV, 2., V, 2. and VII, 4. of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of an in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.
2. That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard

to costs for which such party state or subdivision thereof may be responsible pursuant to articles IV, 2., V, 2. or VII, 4. of this compact."

This, in effect, provides that while the State is held responsible for the costs it may internally provide for the ultimate payment of such costs. As of this date we are not aware of any regulation or law which, in substance, provides for the ultimate liability for costs. Presently the State must assume the initial responsibility but this does not necessarily preclude the State from assessing the costs to a party or parties which initiated the process for the return of a delinquent child or caused such process to be initiated. A "party" would include a county welfare program, agency, department or political subdivision and in some instances it may include individuals. The assessment of costs or the establishment of ultimate responsibility for such costs would be an internal matter to be resolved by the State.

Presently no appropriation by the State has been made specifically for such purposes, nor are there any statutory provisions except as mentioned above which spell out how the costs will be assessed or ultimately borne. The extradition funds appropriated by the Legislature are not available for such purpose. We, however, wish to emphasize that the initial responsibility to underwrite or pay for such costs is placed on the State and to satisfy this requirement the State may use funds which are available.

At the present time we have not made a study of State funds or Federal funds which may be available for such purposes. Until this question has been resolved the executive authority (Governor) or the administrator of the Compact named by the Governor can insist that the party or parties, as earlier described, who initiated or caused to be initiated, or for whose benefit the process was initiated, will assume to pay the costs before putting such process in motion. Mr. Rueben E. Carlson of the State Welfare Department has been designated as the Compact administrator.

This discussion indirectly answers the questions submitted or, in the alternative, illustrates that the questions are not pertinent to the subject matter and, therefore, do not require a specific answer, particularly because of the conclusions reached herein.

It is our opinion that the procedures outlined in Section 27-22-02 of the North Dakota Century Code are the only procedures available for the return of delinquent children or escapees, and that such procedures are to the exclusion of all others. It necessarily follows that a mere order, verbal or written, from a juvenile court or juvenile supervisor will not be adequate. It is our further opinion that where a wanted delinquent child or juvenile is located in a State which is not a member of the Interstate Compact, the State of North Dakota must still follow the procedures set forth in Section 27-22-02 of the North Dakota Century Code. After the request has been so processed, it must be transmitted for appropriate action in accordance with the aforementioned section to the executive authority of the State in which the delinquent child or juvenile is located.

The provisions of 18 U.S.C.A., 5001, would not apply unless the

delinquent child or juvenile is being held under a Federal charge.

HELGI JOHANNESON

Attorney General