

**OPINION
70-152**

March 18, 1970 (OPINION)

Mr. J. D. Woodley

Warden

North Dakota State Penitentiary

RE: Criminal Procedure - Extradition - Escape From State Farm

This is in response to your letter in which you state:

Recently I had three inmates escape from the North Dakota State Farm. All were sentenced for misdemeanor crimes and the sentences ranged from nine months to one year.

I have information that all three of these inmates left the State of North Dakota and will not waive extradition back to the State of North Dakota.

My question is, can these men be extradited on an escape charge from the State Farm and be brought back to the State of North Dakota?"

Basically the extradition process rests upon the constitutional provisions of the United States, section 2 of Article 4 of the United States Constitution which 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."

In addition to this section 29-30-13 of the North Dakota Century Code provides as follows:

GOVERNOR MAY DEMAND FUGITIVES, APPOINT AGENTS FOR RETURN. The governor of this state, in any case authorized by the constitution and laws of the United States, may demand of the executive authority of any other state or territory within the United States, any fugitive from justice, or any person charged with the commission of treason, felony, or other crime in this state, and may appoint agents to receive such persons for and on behalf of this state. Only the sheriff of said county, or one of his deputies, or a constable or policeman thereof, shall be appointed such agent."

It should be observed that both the United States Constitution and the State laws refer to "treason", felony or other crime for which extradition process is available. The term "other crime" includes all crimes whether they be felonies or misdemeanors.

It is our opinion that individuals who escaped from the State Farm
are fugitives of justice and are subject to extradition.

HELGI JOHANNESON

Attorney General