

6018/5705



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 27, 1995

W. S. Hanks, Chief of Police
Honea Path Police Department
30 N. Main Street
Honea Path, South Carolina 29654

Re: Informal Opinion

Dear Chief Hanks:

You have asked the following questions:

1. When a fugitive from South Carolina is arrested in any other state in the United States and is to be extradited back to South Carolina on a State warrant for a felony charge that carried a sentence of more than one year in prison what Law Enforcement agency is responsible for that Extradition?
2. Who is responsible for the cost involved in this action?

The following principles of law are well-settled concerning extradition:

[t]o procure the extradition of a criminal, the chief executive or other designated officer of the State from which the accused has fled must send a written demand to the chief executive of the state where the crime is alleged to be demanding him as a fugitive from justice.

35 C.J.S., Extradition, § 13.

This State has long adhered to the practice whereby the local prosecuting officer, usually the Circuit Solicitor, seeks to have the Governor of South Carolina request of the

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Governor of the asylum state the extradition of the South Carolina prisoner located therein. For example, in 1945-46 Op. Atty. Gen. 171, we stated:

... where a warrant is issued, by a magistrate and placed in the hands of an officer to be executed and the person charged therein with a crime cannot be found in South Carolina, but is located in another State, the Solicitor can make application to the Governor of South Carolina for requisition upon the Governor of the State where the fugitive is located and if said requisition is honored, the fugitive person named in the warrant, can then be brought back to South Carolina for trial.

I am advised that the procedure still basically works that way. Generally speaking, the Solicitor in whose circuit the crime occurred makes an application for requisition to the Governor. The application usually contains supporting affidavits, a copy of the criminal complaint or warrant, a copy of the statute allegedly violated and other related material such as a rap sheet, pictures, finger prints etc. After review of the paperwork, the Governor then makes a requisition demand to the Governor of the asylum state for extradition back to South Carolina.

The prisoner in custody can either waive extradition or demand a hearing. Generally, if a hearing is had, a hearing officer makes a recommendation to the Governor of the asylum state. The Governor of the asylum state reviews the hearing officer's recommendation and either honors the requisition or declines it. If the Governor honors the requisition, he notifies the entity holding the prisoner to release him to South Carolina officials. The only major variation in this process is where the prisoner has escaped from a South Carolina facility; in that case, the request for extradition is usually made by the Department of Corrections and the Attorney General.

With respect to the costs involved in transporting the prisoner from the asylum state to South Carolina, I am advised that the procedure works this way. Usually, an agent from the State Law Enforcement Division is accompanied by an officer from the local law enforcement agency which made the case. If the case was brought by the Sheriff, a deputy from that Department accompanies the SLED agent; if the case was made by a city police department, an officer from that Department assists in the transportation of the prisoner. I am further advised that the policy is that each agency (SLED and the relevant local law enforcement agency) bear its own costs in the transportation of the prisoner.

S.C. Code Ann. Secs. 17-9-60 and 17-9-70 address reimbursement to "agents appointed by the Governor to bring such fugitives into this State ..." and approval by the

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Governor of "such accounts". The problem here is reimbursement to local law enforcement agencies who participate in transportation of a prisoner to South Carolina. In an opinion of this Office dated September 27, 1982 we recognized that law enforcement agencies must generally bear the costs of returning the prisoner. Thus, we suggested that one avenue to relieve local law enforcement agencies of the expense involved was to seek to have the judge set as a condition of bail the paying to the State by the accused of "the cost of sending officers to return the accused to this State after he has been extradited or waived extradition from another State." We also recommended that the General Assembly "amend the bond law to require such condition, as this is a source of considerable expense to law enforcement agencies."

In addition, it is certainly arguable that any probation could also be conditioned upon the payment of the extradition expenses incurred by a law enforcement agency. In a previous opinion, Op. Atty. Gen., No. 86-81 (July 21, 1986), we concluded that, pursuant to Section 24-21-430 of the Code, judges of the Court of General Sessions could require as a condition of probation that a defendant make a contribution to "Crime Stoppers". ["The Court shall determine and may impose by order duly entered and may at any time modify the conditions of probation and may include among them any of the following or any other condition not herein prohibited."] An earlier opinion found that a circuit judge was authorized to impose monetary contributions to the public defender found in lieu of a fine. Op. Atty. Gen., October 4, 1984. See also, State v. Brown, 284 S.C. 407, 326 S.E.2d 410 (1985) [trial judges authorized to suspend sentences upon the conditions they deem fit and proper.] While I do not ordinarily advocate suspended sentences and probation, at least where a trial judge sees fit to impose such a sentence, it would appear reasonable that such include the imposition of extradition expenses.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an