

ers Retirement System under date of July 30, 1937, being Opinion No. 944.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1236

UNIFORM CRIMINAL EXTRADITION ACT—SECTION ALLOWING FEE FOR ISSUANCE OF REQUISITION, REPEALED.

SYLLABUS:

1. *The allowance of fees of the clerk of courts in proceedings where Ohio seeks to extradite a fugitive from justice is unaffected by the Uniform Criminal Extradition Act, Sections 109-1, et seq., General Code.*

2. *There is no authority for the Governor to charge a five dollar (\$5.00) fee for the issuance of a requisition for the extradition of a fugitive from justice inasmuch as said fee was authorized by Section 111, which section was repealed by the Uniform Criminal Extradition Act.*

3. *Section 109-24, General Code, authorizing the payment of certain expenses in extradition cases out of the state treasury in the first instance does not repeal by implication the provisions of Section 2491, General Code, relating to such expenses as may be paid out of the treasury of the county.*

4. *The Uniform Criminal Extradition Act, in view of Section 26 of the General Code, only governs extradition proceedings begun after the effective date of the statute.*

COLUMBUS, OHIO, September 25, 1937.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows:

“The General Assembly recently enacted a law known as the Uniform Criminal Extradition Act, House Bill No. 108, now designated as Sections 109-1, to 109-32 of the General Code.

"In Section 109-24 provision is made for the payment of expenses, which expenses include the fees of a foreign state upon whom demand is made and mileage for the return of the prisoner. House Bill 108 repeals the existing law on extradition, Sections 109 to 115, inclusive, also repeals Section 1655-1 relative to the payment of expenses in certain cases specified therein. It has been the practice in years past to provide for the expenses of returning fugitives from justice under Section 2491 of the General Code and 13455-3, 13455-5, 13455-7 and 13455-8 of the General Code.

"In the light of the foregoing we desire your opinion upon the following questions:

1. Under the new law, is there authority to pay fees of the clerk of courts of this county when this county in applying to the Governor of Ohio for a requisition on the Governor of another state for the return of a fugitive from justice; likewise, is there authority to pay the Five Dollar fee collected by the governor of Ohio in such case.

2. In the event that the expense of returning a fugitive from justice exceeds ten cents a mile, is there authority to incur this obligation and to pay it. For example, officers returning prisoners are sometimes delayed by extended hearings or habeas corpus proceedings and sometimes must remain in the demanding state several days.

3. Are Sections 2491 and 13455-1, 13455-5, 13455-7, 13455-8 repealed by implication or superseded by the Uniform Criminal Extradition Act.

4. Where more than one officer is sent, as in case of the return of a female fugitive where a matron accompanies the officer, does the ten cent per mile limit apply to both expense accounts?

5. Does the new law govern only extradition proceedings begun on and after the date it became effective or does the new law apply to those which are in process of execution on the date the new law becomes effective, particularly with reference to expense accounts."

I will consider your questions in the order mentioned in your communication.

The first question is concerned with the fees of a clerk of courts in cases where the county applies to the Governor of Ohio to extradite a fugitive from justice. In your letter you set forth that the costs were formerly paid under authority of Sections 2491, 13455-3, 13455-5, 13455-7 and 13455-8, General Code. The pertinent parts of these sections provide as follows:

Section 2491, General Code:

"When any person charged with a felony has fled to any other state, * * * and the governor has issued a requisition for such person, * * * the commissioners may pay from the county treasury to the agent designated in such requisition or request to execute them, all necessary expenses of pursuing and returning such person so charged, or so much thereof as to them seems just."

Section 13455-3, General Code:

"Upon sentence of a person for a felony, the clerk shall make and certify * * * a complete itemized bill of the costs made in such prosecution, including the sum paid by the county commissioners, duly certified by the county auditor, for the arrest and return of the convict on the requisition of the Governor, * * *."

Section 13455-5, General Code:

"If the convict is sentenced for felony to imprisonment in the penitentiary or reformatory, or to death, and no property has been levied upon, the sheriff shall deliver such certified cost bill, having accredited thereon the amount paid on costs, with the convict to the warden of the penitentiary or superintendent of such reformatory. When the property has been levied upon and remains unsold, the clerk shall not certify to the sheriff the costs of such conviction, or part thereof, for payment from the state treasury, but the convict shall be delivered to such warden or superintendent in pursuance of his sentence, upon the payment of the cost of transportation."

Section 13455-7, General Code:

"When the clerk of courts certifies on the cost bill that execution was issued according to the provisions of this chapter, and returned by the sheriff 'no goods, chattels, lands or tenements found whereon to levy,' the warden of the penitentiary or superintendent of such reformatory shall certify thereon, the date on which said prisoner was received at the institution and the fees for transportation, whereupon the auditor of the state shall audit such cost bill and the fees for transpor-

tation, and issue his warrant on the treasurer of the state for such amount as he finds to be correct."

Section 13455-8, General Code:

"Upon the return of the writ against the convict, if an amount of money has not been made sufficient for the payment of costs of conviction and no additional property is found whereon to levy, the clerk shall so certify to the auditor of state, under his seal, with a statement of the total amount of costs, the amount paid and the amount remaining unpaid. Such amount so unpaid as the auditor finds to be correct, shall be paid by the state to the order of such clerk."

These sections must now be considered in view of the provisions of House Bill No. 108, known as Sections 109-1 to 109-32 of the General Code. This legislation known as the Uniform Criminal Extradition Act (see Section 109-32, General Code) repealed Sections 109, 110, 111, 112, 114, 115, and 1655-1, General Code, and provides the various procedural steps to be followed in cases of extradition by or from the State of Ohio. The only mention of the payment of costs and expenses is found in Section 109-24, which reads as follows:

"The expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and not exceeding ten cents a mile for all necessary travel in returning such prisoner."

There is no mention in the Uniform Criminal Extradition Act of the payment of costs to the clerk of courts in cases where Ohio extradites fugitives from justice from another state.

There is accordingly no authority, in my judgment, for adopting the position that the provisions of the law to which you refer authorizing payment of clerk of courts' fees in extradition cases have been repealed by implication. Such provisions have not been expressly repealed and as will hereinafter be more fully shown Section 109-24, supra, of the new Act is not in such respect inconsistent with such former provisions.

In your first question you also inquire as to the authority to pay the five dollar (\$5.00) fee collected by the Governor of Ohio in extradition cases. The authority for the Governor to charge a fee not in excess of five dollars (\$5.00) was formerly provided for in Section 111, the pertinent parts of which read:

“The demand or application shall be accompanied with a statement in writing from the prosecuting attorney of the proper county, who shall briefly set forth all the facts of the case, the reputation of the party or parties asking the requisition, and whether in his opinion the requisition is sought from improper motives, etc., * * *. For issuing a requisition fees not to exceed five dollars may be charged.”

As pointed out above, Section 111 was specifically repealed by Section 109-32 of the Uniform Criminal Extradition Act, and it is my opinion therefore that there no longer remains any authority for the Governor to charge a fee of five dollars (\$5.00) for the issuance of a requisition, nor for the payment of any such fee by any of the parties involved.

Your second, third and fourth questions will be answered together, since these questions all relate to how total expenses incurred in such extradition cases may be paid, in view of the New Uniform Criminal Extradition Act.

Section 2491, *supra*, is not limited in its scope to allowances for mileage expenses incurred in extradition cases. Such section by its terms includes “all necessary expenses of pursuing and returning” a person charged with felony who has fled to another state. The section authorizes the payment of all expenses “or so much thereof as to them (the county commissioners) seems just” and provides for such payment from the county treasury.

Section 109-24, *supra*, as recently enacted, in the first sentence provides in broad language that the expenses incurred in extradition cases “shall be paid out of the state treasury.” But the second sentence of this section defines what such expenses shall include—that is to say, such expenses as are paid directly in the first instance from the state treasury shall be, first, fees paid to officers of the foreign state, and second, “not exceeding ten cents a mile for all necessary travel in returning such prisoner.” I have said that such section refers to fees payable from the state treasury in the first instance for the reason that it is obvious that under Sections 13455-7 and 13455-8, *supra*, other items may be ultimately paid by the state in the event the county is unable to be otherwise reimbursed.

To say that Section 109-24, *supra*, relating by its own terms to but two items of expenses payable at the outset from the state treasury supersedes and invalidates Section 2491, *supra*, which authorizes the county commissioners to pay from the county treasury any or all necessary expenses in such cases “or so much thereof as to them seems just,” in the face of the fact that the legislature did not see fit to repeal such

Section 2491, would do violence to every rule as to repeals by implication laid down by the courts. In the absence of a clear showing of repugnancy or irreconcilability between the two statutes, so that it is impossible to give effect to both, the courts will not hold one of such statutes previously enacted to be repealed by the other subsequently enacted. As stated in 37 O. J., in support of which numerous authorities are cited, on pages 397, 398:

“It is not sufficient, in order to effect a repeal by implication, that a later act is different from a former one, or that the subsequent statute covers some of the cases provided for by the former. It must further appear that the later act is contrary to, or inconsistent with, the former in order to justify the conclusion that the first is so repealed. Moreover, difficulty in reconciliation does not necessarily call for a repeal by implication.”

The foregoing rules are subject to some relaxation when the courts are concerned with an entirely new all-inclusive act obviously designed to substitute an entirely new procedure for that heretofore in effect, but in the instant case in so far as the allowance of necessary expenses are concerned in extradition matters, I do not find any new all-inclusive legislation. On the contrary it is perfectly apparent that in the enactment of Section 109-24, being the only section of the new Act relating to the payment of expenses, the legislature merely sought to provide for two specific items of expense which may, as hereinabove indicated, be paid in the first instance from the state treasury and in so far as the second item is concerned, that relating to the allowance of ten cents per mile for all necessary travel in returning a prisoner to this state, there is no limitation therein as to the allowance of this maximum amount of ten cents per mile being made to one or to more than one officer who may be required to return a prisoner. It is clear that actual mileage so incurred may be paid directly from the state treasury up to the amount of ten cents per mile. Other expenses, however, which may be occasioned as set forth in your letter, may obviously be allowed and paid from the county treasury under authority of Section 2491 in such amount as the county commissioners may deem just. Unquestionably the allowance of mileage authorized by Section 109-24 must be taken into consideration by the county commissioners in ascertaining the amount of allowance which they consider may be justly paid from the county treasury. It is my opinion that full effect can and should be given to the former sections of the General Code here under consideration as to allowance of expenses in extradition cases.

In your fifth question you ask whether the Uniform Criminal Extradition Act only relates to extradition proceedings begun after the effective date of the Act.

Section 26 of the General Code provides as follows :

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceedings, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

As the result of this provision there is a presumption that when a statute is amended or repealed, the repealing or amending statute is not intended to affect proceedings already begun before the effective date of the enactment of the repealing or amending statute. As stated in the case of *State, ex rel. Construction Co. vs. Rabbits*, 46 O. S. 178, 181 :

“No generality of language nor use of the present tense, can be accepted by the courts as a substitute for such express indication of the legislative intent.”

More recently the Supreme Court of Ohio in the case of *State, ex rel, vs. Ach* 113 O. S. 482, held as set forth in the first branch of the syllabus :

“Where a legislative enactment materially changes the procedure required to be followed by any governmental agency by requiring certain steps to be taken which were not theretofore necessary, such legislation amounts to an amendment of the laws theretofore existing, and is therefore subject to the rule of interpretation provided by Section 26 of the General Code.”

The Uniform Criminal Extradition Act materially changes the procedure in matters of extradition and the manner in which expenses are paid, and therefore the rule of construction provided for in Section 26 should be followed, and the Uniform Criminal Extradition Act only applied to extradition proceedings begun after the date upon which the law became effective.

In specific answer to your questions therefore, it is my opinion that:

1. The allowance of fees of the clerk of courts in proceedings where Ohio seeks to extradite a fugitive from justice is unaffected by the Uniform Criminal Extradition Act, Sections 109-1, et seq., General Code.

2. There is no authority for the Governor to charge a five dollar (\$5.00) fee for the issuance of a requisition for the extradition of a fugitive from justice inasmuch as said fee was authorized by Section 111, which section was repealed by the Uniform Criminal Extradition Act.

3. Section 109-24, General Code, authorizing the payment of certain expenses in extradition cases out of the state treasury in the first instance does not repeal by implication the provisions of Section 2491, General Code, relating to such expenses as may be paid out of the treasury of a county.

4. The Uniform Criminal Extradition Act, in view of Section 26 of the General Code, only governs extradition proceedings begun after the effective date of the statute.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1237.

COUNTY CHILDREN'S HOME — COMPENSATION FOR DESTRUCTION OF TUBERCULAR CATTLE—HOW PAID—TO REPLACE CATTLE, THERE MUST BE SPECIFIC APPROPRIATION.

SYLLABUS:

1. *Money received by the Superintendent of a county children's home as compensation for the destruction of tubercular cattle must be paid into the county treasury in conformity with Section 5625-10, General Code.*

2. *In order to replace a herd of cattle owned by a county children's home and destroyed pursuant to the authority of Section 1121-8, General*