

N.D.A.G. Letter to Hagerty (Aug. 30, 1985)

August 30, 1985

Ms. Gail Hagerty
Burleigh County State's Attorney
Burleigh County Courthouse
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Hagerty:

Thank you for your letter of August 1, 1985, concerning the new extradition statute as passed by the 1985 Legislature and as found in N.D.C.C. Ch. 29-30.3. Your question concerns the responsibility of the state in reimbursing counties for the expenses incurred in retrieving fugitives pursuant to the extradition process where the offense involves confinement in the State Penitentiary.

You are correct in your summary of statutes in your letter as to the presence in the extradition law in effect prior to July 1, 1985, of a provision allowing the state to pay out of the state treasury expenses incurred in the extradition of fugitives back to the state of North Dakota where the punishment for the crime involved included confinement in the State Penitentiary. You are also correct in stating that a similar statute is no longer found in the current extradition statutes of our state. This is most likely a result of the fact that we have adopted a uniform act with very few amendments on the part of the State Legislature.

Your letter mentions N.D.C.C. 29-30.3-23 which provides as follows:

29-30.3-23. COST OF RETURN. Unless the states otherwise agree, the state to which the person is being returned shall pay the cost of returning the person incurred after transfer of custody to its agent.

The above statute appears to be directed toward agreements among the states as far as costs incurred in returning the person on an extradition. This conclusion is readily apparent upon examining the introductory phrase of the statute where it states "[u]nless the states otherwise agree. . . ."

Furthermore, we must remember that this provision is found in the Uniform Extradition and Rendition Act of 1980. The comment by the National Conference of Commissioners on Uniform State Laws as to this particular provision states as follows:

This section was drafted to take into account the agreements that exist and that are being planned among the states to reduce the cost of fugitive

retrieval by computerizing data on fugitive retrievals and by sharing retrieval expenses and responsibilities.

Handbook of the National Conference of Commissioners on Uniform State Laws, 5-103 at 147 (1982).

The conclusion is inescapable that the language in N.D.C.C. 29-30.3-23 applies only to responsibilities between the states involved in extradition proceedings as opposed to political subdivisions within a state which has initiated an extradition request. The comment to this particular section makes it clear that the only reason for the inclusion for this section was to allow states to agree among themselves as to the sharing of costs for fugitive retrieval. I am unable to see how this language can be stretched to address the responsibility for extradition expenses between a state and its own political subdivisions.

I would hasten to add that the absence of a statute allowing for state reimbursement for county extradition costs in Senate Bill No. 2279 (Uniform Extradition and Rendition Act of 1980) was brought to the attention of both the Senate and House Judiciary Committees by one of my staff attorneys. Indeed, statements by this attorney to the committee indicating the lack of such a comparable statute within the proposed legislation is found within the minutes to the committee hearings. For whatever reasons, however, the Legislature decided not to amend the uniform law to include a provision similar to N.D.C.C. § 29-30.2-24.

I am convinced that the lack of a provision in North Dakota's version of the Uniform Extradition and Rendition Act allowing the state to reimburse counties for their extradition costs is a legislative oversight. This is especially so in light of the appropriation of \$36,000 for the arrest and return of fugitives. 1985 N.D. Sess. Laws 12, § 1(1). Thus, I will seek the necessary legislative amendment to correct this oversight at the next regular session of the Legislature.

Meanwhile, I will personally prevail upon the Governor's Office to continue making payments to the counties for the reimbursement of extradition costs. Although the Uniform Extradition and Rendition Act does not provide for such reimbursement, it does not prohibit it as well. I see no reason why the Governor cannot continue to make payments to counties for extradition costs reimbursement utilizing moneys appropriated for this very purpose by the 1985 Legislative Assembly.

Sincerely,

Nicholas J. Spaeth

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cc: Honorable George A. Sinner