

Opinion No. 53-5767

June 19, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John H. Lawless, Jr. Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

{*166} This will acknowledge receipt of your letter of May 28, 1953, in which you request the opinion of this office as to the interpretation to be given to §§ 42-1927 and 42-1928 of the 1941 Compilation, relating to immunities from prosecution of persons returned to this state under extradition {*167} procedure. The two sections read as follows:

(42-1927) "A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited; **and except as above such person shall not be subject to arrest or service of process, civil or criminal, in connection with matters which arose before his entrance into this state until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.**" (Underscoring ours). (42-1928) "After a person has been brought back to this state by, or after waiver of extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition."

The New Mexico Extradition Act is basically copied from the Uniform Act on the subject. The underscored portion of § 42-1927 is a departure from the Uniform Act and is the cause of the conflict between the two sections.

After thorough study we have come to the conclusion, and it is our opinion, that the latter section prevails. This conclusion is justified by the use of either of the following rules of statutory construction:

- (a) Where there is an irreconcilable conflict between different provisions of a statute, that provision which is last in order of position will prevail as being the latest expression of legislative will.
- (b) Those provisions susceptible of but one meaning will control over those susceptible of two meanings.

(c) A section treating solely and specially of a matter prevails in reference to that matter over other sections in which only incidental reference is made thereto. (See 50 Am. Jur. Statutes, §§ 365-367).

We feel that the due process clause of the Federal Constitution is not violated by § 42-1928, and that you should proceed thereunder without reference to the inconsistent portion of the preceding section.

By: Walter R. Kegel

Assist. Attorney General