

## Opinion No. 56-6476

June 21, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. William J. Cooper, Director of Parole, New Mexico State Penitentiary, P. O. Box 1219, Santa Fe, New Mexico

You have presented for our opinion the question:

"In the absence of formal extradition, may a probationer or parolee be legally compelled, under the provisions of the Interstate Crime Compact, to return to the 'sending' State in the instance where the parolee or probationer has signed an agreement, which in part waives formal extradition, but where the State from which the parolee is sought is not the 'receiving' State?"

The Interstate Crime Compact Act approved by this State, Chapter 9, Laws 1937, in Article II, Section 1, provides that upon certain conditions persons on parole or probation may reside in another State party to the Compact. You have termed the State where parole or probation is granted the "sending" State and the State where the parolee or probationer contemplated residing the "receiving" State. This problem, as indicated by your question, arises where the parolee or probationer is found in a State other than that where it was agreed he should reside. Article III, Section 3 of the Compact, provides, in part:

"That duly constituted officers of compacting states may at all times enter another compacting state and there apprehend and retake any person on probation or parole or under suspended sentence. For these purposes no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. **All former legal requirements to obtain extradition of a person on probation or parole or under suspended sentence are hereby expressly waived.. . .**" (Emphasis Supplied.)

Thus, as between States parties to the Compact it seems immaterial that the State where the parolee or probationer is found is the "receiving" State. The permission granted by the "receiving" State to receive the parolee or probationer under Section 1, Article III of the Act in no manner affects the agreement contained in Section 3, Article III between all compacting States, one with each and every other, to render such persons to the demanding State without extradition. This disposes of that part of the problem which touches the relationship of the "sending" State and the State wherein such person is found.

The last phase of the problem touches the relationship of the "sending" State, the State where the parolee or probationer is found, and the parolee or probationer himself. In ordinary circumstances such persons or the State where they are found could insist on

extradition. See *People vs. Baldwin* 341 Ill. 604, 174 N.E. 51. Under the Compact, as shown above, the State where such person is found has waived legal requirements of extradition. But this agreement certainly does not waive for the parolee or probationee his rights thereto. As to the latter the necessary waiver is effected by the parole agreement and Interstate Compact Waiver which are executed by parolee or probationee as a condition of his parole or probation.

The Parole Agreement, as its Condition No. 10 provides:

"If you should be arrested in another state during the period of your parole, you agree hereby to waive extradition and to return to the State of New Mexico at the request of the Board of Parole of the State of New Mexico."

The Interstate Compact Waiver, in paragraph 4, provides:

"That I hereby do waive extradition to the State of \_\_\_\_."

These provisions as between probationee or parolee and this State are sufficient to waive extradition from any State.

Your question is, therefore, answered in the affirmative.

By: Santiago E. Campos

Assistant Attorney General