

## Opinion No. 31-171

May 26, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{\*78} In your letter of May 25th, you wish to know if the State of New Mexico should pay extradition expenses of a sheriff when the person sought is not brought back by the sheriff.

It is noted that former Attorney General, Mr. Otero, rendered an opinion, dated January 5, 1929, in which he construed Section 2408 of the 1915 Code, and in which he **held that** the person must be both apprehended and transported to this state before the expenses could be legally paid by the state.

Your attention is called, however, to the fact that this section was repealed by Section 29 of Chapter 118 of the Laws of 1927, and which is now cited as Section 56-129 of the 1929 Compilation.

The only existing law which we now have with reference to expenses in extradition proceedings is Section 56-124 of the 1929 Compilation, and which section reads as follows:

"When the punishment of a crime shall be the confinement of the criminal in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the governor and warrant of the auditor; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed."

In our opinion the expenses incurred by a sheriff in extradition proceedings under this section should not be limited to apprehension and transportation to this state. The sheriff or his agent having been designated to proceed upon an extradition matter should be reimbursed his expenses regardless of whether he is successful in returning the prisoner to this state.

The official who is designated to proceed under such extradition matters has no way of knowing in advance what he may encounter by way of objections resulting at some hearing before the Governor of the state to which he has gone, and no way of knowing what may be the result of any habeas corpus proceeding, instituted by the prisoner or his attorney.

Therefore, in all fairness to the official who has expended his money in good faith, it is our belief that reimbursement should be made by the state when the punishment of the crime shall be confinement in the penitentiary.

By: Frank H. Patton,  
Asst. Attorney General