

Opinion No. 46-4863

February 25, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Howell Gage Warden, State Penitentiary Santa Fe, New Mexico

Re: 11538

OPINION

{*194} Replying to your request for an opinion in the matter of a request made by the United States Marshal, Shreveport, Louisiana, requesting your consent to extradition of the above numbered subject, to answer for charge pending for violation of the National Motor Vehicle Act.

The State of New Mexico may retain custody of the prisoner until he has served his sentence.

{*195} "The state which first arrested and imprisoned prisoner could not, without its consent, be deprived of his custody, by the federal government until through with him." Zerbst v. McPike, 97 F.2d 253.

"A sovereign having prior and exclusive jurisdiction and custody of person for violation of its penal law may voluntarily surrender him for purpose of trial on a criminal charge, and, in such circumstances, the question of jurisdiction and custody is essentially one of comity and not a personal right of the individual." Stamphill v. U.S. 135 F.2d 177.

From the foregoing, it will be noted that the granting or refusing the request, or any negotiations pertaining thereto, are entirely within the discretion of the New Mexico authorities.

By THOS. C. McCARTY,

Asst. Atty. General