fiedly accepted each and every provision of the Federal Act and also designated and authorized the creation, and did create, a state agency vested with all powers necessary to cooperate with the United States Employment Service. This conclusion is not in any way affected or restricted by the language appearing in the next to the last sentence of Section 2401, supra.

JAW:je

OFFICIAL OPINION NO. 10

March 21, 1949.

Hon. C. E. Ruston,
State Examiner,
State Board of Accounts,
State House, Room 304,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your request for an official opinion of the Attorney General on the questions submitted by you and which are as follows:

"1. When a city judge issues a warrant for a person accused of crime to be returned from another county in the State, what mileage or fee is the officer returning the person entitled to receive for his service?

"2. Is the cost of returning such person to be paid by the city or by the county in which the city is located?

"3. Should any costs of returning such person be taxed as costs in the case? If so, would the amount so taxed be the actual cost of returning such person or would the amount taxed be as prescribed by Section 2, Chapter 18, Acts of 1917 (Burns 1933, Section 4-2412)?

"4. If the county in which the city is located is obligated to pay the cost of returning a person from another county to the city court, and if costs for the return of such person are taxable in the case, upon collection of the costs, should the court or the clerk thereof reimburse the county for the amount expended by the county for returning such person?
“5. Can a city judge appoint an assistant to accompany an officer in the return of a person from another county and fix the compensation of such assistant? If so, would the compensation be paid by the city or by the county?

“This office is confronted with these questions in a city of the third class. If your answers would not be the same when applied to city courts in cities of the second, fourth and fifth classes, please state the exceptions.”

It is noted that your questions are limited to proceedings in criminal prosecutions originating in city courts. The questions deal mainly with the proper method of charging the cost or expenses of returning prisoners from a county in the State to another county to answer a criminal prosecution.

It appears that your questions may be answered mainly by Burns Indiana Statutes, Section 9-418, being the Acts of 1923, Chapter 8, Section 2, page 17, which reads as follows:

“When any person has committed a crime in any county in the state of Indiana, which is punishable by imprisonment in the state’s prison, and has fled to any other county, state, territory, or country, and the governor has issued a requisition for such person or a grant jury indictment or affidavit charging said person with said crime has been filed, and the judge of the circuit, superior, criminal or city court, or the justice of the peace before whom the said indictment or affidavit is filed, shall issue a warrant for the arrest of said criminal, and designate an agent in said warrant to make the arrest and return the criminal to the court, upon the request of the prosecuting attorney or his deputy for the county in which the crime was committed. The agent shall return the criminal by the shortest possible route and shall receive the following mileage. Eight cents (8c) for each mile of the first two hundred (200) miles traveled; seven cents (7c) for each mile of the next three hundred (300) miles traveled, six cents (6c) for each mile of the next five hundred (500) miles and over
traveled, and five cents (5c) per mile for each mile traveled by the prisoner while in the custody of the agent. The said agent shall be reimbursed for all money legally expended to obtain possession of said criminal, upon presentation of receipts covering the same, together with a sworn statement by him that such items of expenditure are true and correct. Such sum shall be paid out of the county treasury of the county in which the said crime was committed, upon certificate of the judge or justice of the peace before whom said indictment or affidavit is on file, stating that the said criminal has been brought before him and arraigned, and on the verified statement of said agent, certified to by the said judge or justice of the peace, filed with the auditor of the said county, who shall draw his warrant therefor. And the county council shall make such appropriation as shall be necessary to carry out the provisions of this act: Provided, That if any such agent shall, without fault of such agent, be unable to apprehend and produce such fugitive from justice, such agent shall, notwithstanding, be entitled to receive the mileage, other than the mileage of the prisoner, as hereinbefore provided, and, in addition thereto, shall be reimbursed for all money legally expended in his attempts to obtain possession of such fugitive."

1. The answer to the first question is contained in the above quoted statute.

2. In accordance with the above quoted statute, the cost of returning the prisoner should be paid by the county.

3. Burns Indiana Statutes, Section 4-2403, Acts of 1921, Chapter 161, Section 2, page 404, in fixing costs chargeable to defendants in city courts, provides in part as follows:

"** It shall be the duty of such judge, whether regular or special, to tax, for the use and benefit of such city, a docket fee of five dollars ($5.00) in each case where a defendant is adjudged guilty of a violation of any law of this state or ordinance of such city, which docket fee shall be collected in the same manner as other costs are collected; and no other fees whatever,
except witness fees, shall be taxed against a defendant, unless as otherwise expressly stated in this act: * * *"

Therefore, question number three should be answered in the negative.

4. The answer to question number 4 should be that there are no chargeable costs for returning a prisoner.

5. The statute above quoted provides that "The said agent shall be reimbursed for all money legally expended. * * *"

It is my opinion that if the court having jurisdiction should find it necessary to appoint an assistant to the agent, and, should approve the allowable expense of such agent, that such court could lawfully appoint such agent and fix his compensation. This expense should be paid by the county. If the appointed assistant should be a police officer receiving pay for his services as such, he would not be entitled to further compensation except for actual expenses incurred.

My answers would be the same for cities of every class.

It is noted that the foregoing statute applies to the return of persons charged with a felony. Considering the official opinion of the Attorney General rendered on April 21, 1943, page 199, and statutes relevant, it may be said that a county sheriff is entitled to the same expenses in returning a prisoner charged with a misdemeanor as one charged with a felony. But there appears to be no clear and definite statutory provision for paying the expenses of an officer of a city court in returning a prisoner from another county to the county and city where the charge is pending. There is a provision applying to such cases where the accused is arrested in another county and returned by an officer of that county where the accused is arrested or detained, to the county where the charge is pending. Burns Indiana Statutes, Section 9-401, reads in part as follows:

"* * * And the officer who shall convey such fugitive from the county where he was first arrested to the county in which the offense was committed shall receive the same fees for such service as are by law allowed to sheriffs for like services, and subject to the same rules and conditions. * * *."
This statute applies to crimes generally. Also, there is authority for an officer of a city court to arrest an accused in another county and return the accused to the county where the offense was committed. Burns Indiana Statutes, Section 9-701 reads in part as follows:

"* * * And if the accused flee from justice, or has already escaped from the county in which the offense was committed, the officer holding the warrant, upon having the certificate of the county clerk attached thereto, setting forth that the magistrate signing the warrant was at the time duly commissioned and qualified as such, may pursue and arrest him in any county in this state; * * *." 

This statute applies to crimes generally. But there appears to be no statute specifically making it the duty of the city of which the city court is a part, and where a misdemeanor is charged, to reimburse the officer for his expenses incurred in going after and returning the accused to the county and city where the charge is pending.

It would seem that in a case of misdemeanor over which the city court had complete jurisdiction, and where the expense of returning the prisoner was caused by the city court, that such city is obligated to bear that expense and would be liable therefor.

Therefore, it is my opinion that in cases of misdemeanors pending in city courts, where prisoners are returned from other counties upon warrants issued by said courts by officers of said courts, that the expenses, computed in the same manner as sheriff’s expenses are allowed, are properly chargeable against the city of which the city court is a part.

In cases of misdemeanors, I find no authority for the payment of the expense of an assistant to the officer to whom the warrant was issued.

Burns Indiana Statutes, Section 4-2411 provides that warrants from city courts “be directed to the chief of police of such city, a constable of any justice court located in such city, or any person specially deputized by the city court, and shall be executed, served and returned by such chief or by any policeman of such city * * *.”
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As a practical matter, most such warrants are executed by police officers who are paid a salary, and prisoners within the State are returned in city owned cars operated at city expense, so that little or no expense is involved when such practice is followed.

OFFICIAL OPINION NO. 11

March 24, 1949.

Hon. James M. Propst,
Auditor of State,
State House,
Indianapolis, Indiana

Dear Mr. Propst:

I have your letter of March 11, 1949 in which you request an official opinion on the following questions:

"Under the 1945 Acts the Auditor of State shall set up on the first day of April of each year a three million dollar reserve for cities and towns. This reserve was set up from monies collected from January 1st to March 31st deposited in the Motor Vehicle Highway Account Fund.

"While we feel sure the intent of the Legislature was to distribute to the cities and towns 15% of the funds available for distribution on April 1st of each year and 15% quarterly thereafter, however, in view of the language used in Section 1a, can the Auditor of State use this method of distribution?

"Can the Auditor of State on April 1, 1949 and quarterly thereafter distribute to cities and towns on a population basis 15% of the funds available for distribution in the Motor Vehicle Highway Account Fund?

"Also Chapter 291 of the Acts of 1947 sets out a method of distribution of net Gasoline Tax collected in excess of $7,500,000.00 quarterly. This Act expires March 31, 1949.