

Opinion No. 60-66

April 12, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: A. P. Winston, Jr., Chief New Mexico State Police P. O. Box 919 Santa Fe, New Mexico

QUESTION

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May an officer of the New Mexico State Police, while in hot pursuit of a person who has committed a felony in New Mexico, enter the State of Colorado, arrest such a person there and return him to New Mexico without obtaining extradition?

CONCLUSION

Yes.

OPINION

{*423} ANALYSIS

Pursuant to the Interstate Crime Compact, adopted and ratified by New Mexico, Colorado, Wyoming and Kansas, a New Mexico State Police Officer may, while in the hot pursuit of a felon, enter the State of Colorado, arrest the felon and return him to New Mexico without obtaining extradition. The Interstate Crime Compact (set out for reference following Section 41-20-1; N.M.S.A., 1953 Compilation) appears to be self-explanatory and provides in pertinent part as follows:

"I

Arrest of Persons Who Have Committed a Felony or Who Are Fugitives From Justice

(1) That it shall be competent for any member of a duly organized state, county or municipal peace unit of a state, party to this compact, to enter any and all other states, parties to this compact, without interference:

(a) While in pursuit of any person who has committed a felony in said state; or

(b) While in pursuit of any person who has been charged with the commission of a felony in said state; or

(c) While in pursuit of any person who has escaped from the custody of any penitentiary, jail or other penal institution, sheriff or other peace officer in said state.

(2) That any member of a duly {*424} organized state, county or municipal peace unit of said state may at any time enter another state, party to this compact, and there apprehend and take into custody any person who has committed a felony in said state, or who is a fugitive from justice as herein designated, and for that purpose no formalities shall be required, other than establishing the authority of the arresting officer.

(3) All legal requirements to obtain extradition of any person . . . arrested under conditions herein specified are hereby expressly waived by the compacting states. . ."

It is clear that this Compact, which was ratified and adopted in its entirety by both New Mexico and Colorado, permits such an arrest in Colorado and return to New Mexico without obtaining extradition.

However, it must be remembered that the same rule does not prevail with regard to arrests in other neighboring states with whom we have no similar interstate compact. The authority of New Mexico police officers to cross into another state to make an arrest is limited to the authority which such state has granted. Since extra-territorial police activities constitute an invasion of the neighboring state's sovereign power, they are lawful, only when permitted by the laws of the neighboring state.

New Mexico, and several other states including Arizona and Utah, have enacted in law a statute referred to as the "Uniform Act on Fresh Pursuit." Section 41-2-1, et seq., N.M.S.A., 1953 Compilation. The effect of this type statute is to permit the police officers of another state to enter a state having such a statute, while in fresh pursuit of one who is believed to have committed a felony, and to arrest such person and hold him in custody. However, the statute further provides that the arresting officer shall take the person arrested before a magistrate of the county in which the arrest was made. If the magistrate determines that the arrest was lawful, the person arrested will be jailed to await extradition. We see, therefore, that a New Mexico police officer may enter Arizona or Utah while in hot pursuit of a person suspected of committing a felony and may arrest such person. However, the suspect must be brought before a magistrate of the state where arrested and cannot be returned to New Mexico except by extradition.

Still another situation exists with regard to the State of Texas. New Mexico has no interstate crime compact with Texas, nor has Texas adopted a "fresh pursuit" statute. Therefore, it appears that there is no statutory authority for New Mexico police officers entering the State of Texas to make an arrest.

By: F. Harlan Flint

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