

Opinion No. 15-1501

April 22, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Wm. C. McDonald, Governor of New Mexico, Santa Fe, N. M.

Relative to requisition papers from the Governor of the state of Illinois.

OPINION

{*84} Referring to the matter of the requisition from the Governor of the State of Illinois for the arrest and return to that state of Charles A. Siringo, argument upon objections to which was heard by you {*85} yesterday, in accordance with your request today, I will, as briefly as possible, state my opinion as to those objections, or rather as to a part of them, as a large portion thereof does not seem to call for any special consideration.

The act of congress under which extradition is sought requires that the requisition must be based upon an indictment or upon an affidavit before a magistrate as will be seen by reference to Section 5278 of the revised statutes of the United States. In this case the foundation of the prosecution in Illinois is an information by an individual presented to the municipal court of Chicago in conformity with the statutes of that state, and sworn to before a judge of that court. This is clearly not an indictment and cannot be considered as such in view of decisions in the federal courts.

Can it be considered as an affidavit before a magistrate? There are some state cases which hold that such an information is sufficient, but in matters concerning the liberty of a citizen, I am not convinced that any relaxation of the statute or of a strict rule of construction to be applied thereto, should be tolerated. I am quite convinced that when the statute speaks of an affidavit before a magistrate, it means such magistrates as justices of the peace receiving complaints for the purpose of a preliminary examination and cannot include the judges of courts of record unless they are distinctly declared by statutes to be magistrates. I cannot find anything of that sort in the statutes of Illinois with regard to the judges of the municipal court of Chicago, which appears to have a very extensive civil jurisdiction and a somewhat limited criminal jurisdiction. Criminal cases, punishable by fine or imprisonment otherwise than in the state penitentiary, fall within the jurisdiction of this court and the offense with which Siringo is charged is in that class as the punishment is by fine not exceeding \$ 500 or by imprisonment in the county jail not exceeding one year.

For the reasons above considered, I am of opinion that this requisition is not sufficient, but some of the other objections seem to require little attention, those objections being based upon failure to comply with the rules of practice adopted August 24, 1887, by the governors of the states represented at a conference held upon invitation of the then governor of New York. Those rules require a certificate of the district or prosecuting

attorney that the application is not made for the purpose of enforcing the collection of a debt or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects. Certification by the state's attorney for Cook county to this effect is entirely lacking.

It is also required that the same officer should certify that the person named as agent is a proper person and has no private interest in the arrest of the fugitive. This also is lacking, but I incline to the belief that this would not be essential when the governor has actually appointed the agent.

By those rules of practice it is required that the official character of an officer taking any affidavit and of the officer who issued the warrant, must be duly certified. Some attempt is made in the present case to comply with this, but whether by accident or design {^{*86}} the certificate of the clerk of the municipal court of Chicago as to someone being a judge of the court and authorized by law to administer oaths, does not contain the name of the person referred to. It might be possible to consider this a mere clerical omission, but there is a possibility of there being some question on this point so that the clerk was unwilling to make the certificate complete.