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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Sheriffs – Contracts – Inmates –
Transportation

There is no statutory authority for the sheriff to transport prisoners charged with crimes in other states to and from those states.

Dear Mr. McCool:

This opinion of the Attorney General is issued in response to your request on behalf of the Sheriff of Pickens County.

QUESTION

May the Sheriff of Pickens County subcontract with a private extradition service to transport prisoners from one prison facility to another, whether the facility is in the state of Alabama or not and whether the prisoners are state prisoners or not, for the benefit of another state?

FACTS AND ANALYSIS

Your request states as follows:

The Sheriff of Pickens County and the Pickens County Commission are presently contracted with North Atlantic Extradition Service (“NAES”). The purpose of the contract is to temporarily house out-of-state and in-state prisoners who are being transported by NAES. NAES wishes to subcontract with the sheriff to transport such prisoners. The sheriff would be

required to transport such prisoners for the benefit of other states.

Section 36-22-3 of the Code of Alabama sets forth the general powers and duties of county sheriffs as follows:

(1) To execute and return the process and orders of the courts of record of this state and of officers of competent authority with due diligence when delivered to him for that purpose, according to law.

(2) To attend upon the circuit courts and district courts held in his county when in session and the courts of probate, when required by the judge of probate, and to obey the lawful orders and directions of such courts.

(3) The sheriff of each county must, three days before each session of the circuit court in his county, render to the county treasury or custodian of county funds a statement in writing and on oath of the moneys received by him for the county, specifying the amount received in each case, from whom and pay the amount to the county treasurer or custodian of county funds.

(4) It shall be the duty of sheriffs in their respective counties, by themselves or deputies, to ferret out crime, to apprehend and arrest criminals and, insofar as within their power, to secure evidence of crimes in their counties and to present a report of the evidence so secured to the district attorney or assistant district attorney for the county.

(5) To perform such other duties as are or may be imposed by law.

ALA. CODE § 36-22-3 (2001) (emphasis added).

This section does not address the transportation of prisoners. Nor does the Code of Alabama elsewhere grant the sheriff general authority to transport prisoners, although other provisions provide for such transportation in certain circumstances.

There are two statutory schemes that specifically provide for the interstate transfer of prisoners. First, the Interstate Agreement on Detainers (“IAD”), “adopted in Alabama through the Uniform Mandatory Disposition of Detainers

Act, is codified at section 15-9-81, *et seq.*, of the Code of Alabama. ALA. CODE § 15-9-81, *et seq.* (1995).” Opinion to Honorable James B. Johnson, Baldwin County Sheriff, dated January 30, 2006, A.G. No. 2006-044, at 2. The IAD “governs the transfer of people charged with crimes in one jurisdiction who are *incarcerated* in another jurisdiction. § 15-9-81, Code of Alabama 1975.” *Coulter v. State*, 611 So. 2d 1129, 1131 (Ala. Crim. App. 1992) (emphasis added).

The only provision in the IAD on the taking of physical custody of the prisoner is found in Article V(b), which states that the “officer or other representative of a state” with charges may take temporary custody. ALA. CODE § 15-9-81 (2011). This Office has recognized that the sheriff may transport an inmate from another state to Alabama for trial and back to that state at the conclusion thereof under the IAD. Opinion to Honorable Melvin Bailey, Sheriff, Jefferson County, dated June 4, 1982, A.G. No. 82-00365.

The sheriff, however, may not serve as a representative of another state to transport a prisoner to that state for trial because the sheriff’s jurisdiction ordinarily ends at the county line. Opinion to Honorable Lorey Bogen, Councilmember, Town of Brantley, dated March 18, 2008, A.G. No. 2008-063. The Legislature has seen fit to extend the jurisdiction of the sheriff only to other counties in Alabama on a valid mutual-aid agreement with another county or municipality under section 11-102-1 of the Code of Alabama. Opinion to Honorable Edmund M. Sexton, Sr., Sheriff, Tuscaloosa County Sheriff’s Office, dated March 20, 2003, A.G. No. 2003-106.

The extradition statutes comprise the second statutory scheme providing for the state-to-state transfer of prisoners. “Alabama’s version of the Uniform Criminal Extradition Act (UCEA) is found at § 15-9-20 *et. seq.*, Code of Alabama 1975.” Opinion to Honorable Stephen M. Billy, District Attorney, 21st Judicial Circuit, dated October 23, 2009, A.G. No. 2010-005, at 1. “Extradition proceedings govern the transfer of people who have committed a crime and then fled from justice in that state to another state, where they remain free. § 15-9-30, Code of Alabama 1975.” *Coulter*, 611 So. 2d at 1131.

Article 2 of chapter 9 of title 15 provides for extradition. Division 2 of article 2 addresses the extradition of fugitives from justice from Alabama to other states. ALA. CODE §§ 15-9-30 to 15-9-49 (2011). The fugitive is to be delivered “to the duly authorized agent of the demanding state.” ALA. CODE § 15-9-36 (2011). Division 3 addresses the extradition of fugitives from other states to Alabama. ALA. CODE §§ 15-9-60 to 15-9-65 (2011). The Governor may direct the sheriff to retrieve the fugitive and return the fugitive to Alabama. ALA. CODE § 15-9-60 (2011); ALA. CODE § 15-9-62 (2011). Therefore, although the sheriff is authorized to transport an Alabama fugitive, none of these provisions authorize the sheriff to transport a fugitive from another state.

In addition to the UCEA and IAD, the jail statutes specifically provide for the removal of prisoners from the jail by the sheriff for dangerous conditions [ALA. CODE § 14-6-7 (2011)], fire [ALA. CODE § 14-6-8 (2011)], or ill health [ALA. CODE § 14-6-9 (2011)]. Section 14-6-10(a) authorizes the moving of county prisoners from county to county. ALA. CODE § 14-6-10(a) (2011).

Retrieving and returning prisoners charged with crimes in other states is not one of the several purposes for which the sheriff may transport a prisoner discussed above. Under the well-established rules of statutory construction, where a statute enumerates certain things on which it is to operate, the statute must be construed to exclude all things not expressly mentioned. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985). Where, as here, the Legislature has chosen not to give the sheriff the power to transport prisoners charged with crimes in other states to and from those states, it is the opinion of this Office that the sheriff may not do so.

CONCLUSION

There is no statutory authority for the sheriff to transport prisoners charged with crimes in other states to and from those states.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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