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April 11, 1979

ATTORNEY GENERAL OPINION NO. 79- 58

Mr. Bernard J. Dunn
Chief Legal Counsel
Kansas Department of Corrections
Suite 200
535 Kansas Avenue
Topeka, Kansas 66603

Re: Criminal Procedure -- Uniform Criminal Extradition
Act -- Bail

Synopsis: A person arrested in Kansas on the basis of an out-of-state parole violation warrant may be admitted to bail by bond in the discretion of the judge of the court having jurisdiction of the matter. The person may not be admitted to bail by bond if the underlying offense is one which is punishable by death or life imprisonment under the laws of the state in which the offense was committed.

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Dear Mr. Dunn:

You inquire specifically whether an out-of-state parole violator, who is arrested in Kansas pursuant to a foreign parole violation warrant, may be released on bond when the warrant directs that the violator not be released on bond. The general provision for release of persons in the extradition process is set out in K.S.A. 22-2716, which provides:

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"Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the governor of this state." (Emphasis supplied.)

Thus, the general rule in such cases is that an accused may be admitted to bail by bond pending extradition procedures; however, the emphasized language in the foregoing statute indicates two important qualifications. First, admission to bail by bond is not authorized when the accused is charged with an offense which is punishable by death or life imprisonment under the laws of the demanding state. Secondly, admission to bail by bond under the Criminal Extradition Act is a discretionary decision of the judge or magistrate which may be extended to the accused and is not a right held by the accused. It is our opinion that the language of K.S.A. 22-2716 would effectively supersede a directive on the parole violation warrant prohibiting release of the accused on bond. Whereas such a directive may be considered by the judge in exercising his or her discretion and complied with as a matter of interstate comity, such a directive would not have the force and effect of prohibiting the accused's release on bond.

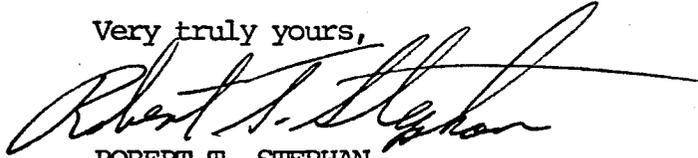
An inquiry not entirely collateral to this matter involves the distinction, if any, between one "charged with an offense" and one accused of violating the conditions of their parole. It is our opinion that there is no appreciable distinction between these two categories when considered in this particular context, i.e., admission to bail by bond while extradition proceedings are pending. Although it is true that one accused of parole violation stands convicted of an offense, that fact alone does not foreclose the privilege of release upon bond. The situation of an accused parole violator is not unlike the situation of one who has been convicted of a crime and is awaiting sentencing. This is illustrated by K.S.A. 1978 Supp. 22-2804, which provides in pertinent part:

"(1) A person who has been convicted of a crime and is either awaiting sentence or has filed a notice of appeal may be released by the district court under the conditions provided in K.S.A. 1977 Supp. 22-2802 if the court or judge finds that the conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community." (Emphasis supplied.)

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Subject to the qualifications previously mentioned, it is our opinion that a person arrested in Kansas pursuant to a foreign parole violation warrant may be admitted to bail by bond in the same respect that one accused of an offense may be released pursuant to K.S.A. 22-2716.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



James E. Flory
Assistant Attorney General

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