

OPINION
57-67

June 18, 1957 (OPINION)

COUNTIES

RE: Warrants Lost or Destroyed - Duplication

This is in reply to your letter of June 14, 1957, requesting an opinion of this office in regard to duplication and payment of lost or destroyed county warrants.

Your question is, in essence, whether in the case of a warrant, due and payable for a small sum of money, which has been lost, a new warrant may be made out and immediate payment made by the treasurer of the county, pursuant to the terms of section 21-0602 of the N.D.R.C. of 1943.

Section 21-0602 of the N.D.R.C. of 1943 provides that if any instrument which might be duplicated under the provisions of chapter 21-06 is due and payable the same may be paid by the proper treasurer without the issuance of a duplicate.

Section 21-0603 of the N.D.R.C. of 1943 provides in effect that duplication or payment of any mutilated, defaced, lost or destroyed obligation shall be made upon resolution of the proper board, proof of loss, or destruction and upon giving a surety bond in double the amount of the lost obligation conditioned to save the obligor harmless in the premises. The statute does not in terms distinguish between the instance where a duplicate warrant is issued, or where payment is made without issuance of a duplicate warrant under the provisions of section 21-0602.

You will note that chapter 21-06 of the N.D.R.C. of 1943 is largely a revision of chapter 103 of the 1927 Session Laws, "Revised for clarity and brevity", if we may quote the revisor's notes. However, on this specific point, it is our opinion that the specific language of section two of this chapter is much clearer than is the present codification. If we may quote therefrom:

"* * * * provided, however, that where such obligation, whether due or not due, has been lost or destroyed, the owner shall first furnish proof of such loss, or destruction and give a surety bond as the Industrial Commission or governing body shall determine, to the State or political subdivision, as the case may be, in a sum double the amount of the lost obligation, and conditioned to save it harmless in the premises; * * *."

In view of the above, it is our opinion that in the event of a warrant, whether due and payable or not, becoming lost, mutilated or destroyed, it will be necessary under the terms of said chapter 21-06 to fulfill specifically the requirements of said section 21-0603, prior to issuance of duplicate warrants or making payment of the obligation thereby represented.

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