

988.

APPROVAL, BONDS OF SOUTHLINGTON TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, September 12, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

989.

DUPLICATE WARRANT—COUNTY AUDITOR IS WITHOUT AUTHORITY TO REQUIRE BOND OF INDEMNITY AS A CONDITION PRECEDENT TO ISSUANCE OF DUPLICATE WARRANT.

SYLLABUS:

Inasmuch as the state is not bound by the terms of a general statute unless it be so expressly enacted, a county auditor is without authority to require a bond of indemnity as contemplated in Section 2293-32, General Code, from the Bureau of Motor Vehicles as a condition precedent to the issuance of a duplicate warrant to replace one that has been misplaced, destroyed or lost.

COLUMBUS, OHIO, September 12, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“We respectfully request from your office an opinion as to the law governing the following situation.

Under date of June 4th, 1927, the auditor of Summit County, Ohio, issued his warrant in the amount of \$33,351.53, payable to Chalmers R. Wilson, Commissioner of Motor Vehicles, covering the state's share of certain auto license receipts. On June 30th a representative of Mr. Wilson's office advised the auditor in a personal interview that the warrant had been returned to the Summit County auditor by mail shortly after the same had been received at Columbus. The auditor was formally advised of this fact by a letter at a later date. Search was made for the warrant by the auditor of this county and he has been unable to locate the same, nor has anybody in his office seen it since it was mailed to Columbus.

The Commissioner of Motor Vehicles is requesting the auditor to issue him a duplicate warrant. The treasurer of Summit County has been notified to stop payment on this warrant and to date the same has not been presented for payment although on the face of the warrant in plain type is printed 'this warrant must be cashed within thirty days.'

There are two questions arising on the following state of facts concerning which we desire your advice. First, under Section 2295-5, is the auditor entitled to receive from the Commissioner of Motor Vehicles, a bond of indemnity before he issues a duplicate warrant? Second, in your opinion would the auditor of Summit County be personally liable in case he issued a duplicate warrant without such indemnity bond and the original warrant had been negotiated into the hands of a bona fide holder?"

The Bureau of Motor Vehicles and the office of Commissioner of Motor Vehicles were created by Section 6290-1, General Code, which so far as pertinent to your inquiry provides:

"There is hereby created in the office of the Secretary of State, a bureau of motor vehicles which shall be administered by a commissioner of motor vehicles referred to hereafter in this act as the commissioner.

* * * * *

It shall be the duty of the commissioner to enforce the motor vehicle laws of the state. * * * "

By the terms of Section 6291-1, General Code,

"The commissioner of motor vehicles shall designate the county auditor and one or more persons in each county to act as deputy commissioners.
* * * "

Section 6309, General Code, provides in part as follows:

" * * * He (the county auditor) shall apportion the tax collections between the state and the several districts of registration in the county, and *pay the state's portion thereof monthly*, to the commissioner of motor vehicles who shall pay the same into the state treasury. * * * " (Italics the writer's.)

1. In your letter you refer to Section 2295-5, General Code, and inquire whether or not the auditor is entitled to receive from the commissioner of motor vehicles a bond of indemnity before he issues a duplicate warrant. This section was repealed by an act passed April 21, 1927, being House Bill No. 1, which became effective August 10, 1927. An analogous section was enacted by the terms of House Bill No. 1, the new section being numbered Section 2293-32, General Code, which reads as follows:

"Whenever bonds, notes, checks or certificates of indebtedness, issued by a subdivision or other political taxing unit of the state are lost or destroyed, said subdivision or taxing unit may reissue to the holder or holders duplicates thereof in the same form and signed as the original obligations were signed, which obligation so issued shall plainly show upon its face that it is a duplicate of such lost bond, note, check or certificate, upon proof of such loss or destruction, upon payment of the reasonable expense thereof, and upon being furnished with a bond of indemnity, satisfactory to the bond issuing authority, against all loss or liability for or on account of the obligations so lost or destroyed."

As above indicated, the Bureau of Motor Vehicles is an agency of the state, established by an act of the legislature, with powers and duties prescribed by law. It

acts under the name and by the authority of the state. Such being the case the general rule of law applies, which, as stated in 36 Cyc. 1171, is as follows:

"The state, or the public, is not to be considered as within the purview of a statute, however general and comprehensive the language of such act may be, unless expressly named therein or included by necessary implication."

To the same effect see *The State of Ohio ex rel. Parrott et al. vs. The Board of Public Works of the State of Ohio*, 36 O. S. 409, the third paragraph of the syllabus of which reads:

"3. The state is not bound by the terms of a general statute unless it be so expressly enacted."

As stated by Chief Justice McIlvaine, who wrote the opinion of the court, on page 414:

"The doctrine seems to be, that a sovereign state, which can make and unmake laws, in prescribing general laws intends thereby to regulate the conduct of subjects only, and not its own conduct."

In view of the foregoing and answering your first question specifically I am of the opinion that the Bureau of Motor Vehicles, being an agency of the state and in fact the state itself, is not within the purview of the statute above quoted and a county auditor is without authority to require a bond of indemnity from the Bureau of Motor Vehicles as a condition precedent to the issuance of a duplicate warrant in place of a warrant which has been lost, destroyed or misplaced.

2. Answering your second question I deem it unnecessary to discuss at length the rights of a holder in due course of negotiable paper. You state that the treasurer of Summit County has been notified to stop payment upon the warrant in question. You further state that such warrant was dated June 4th, 1927, and upon its face in plain type was printed "This warrant must be cashed within thirty days."

In view of the foregoing and answering your second question specifically, it is my opinion that any holder of this warrant is charged with notice of the period within which such warrant must be presented for payment and inasmuch as such period has long since expired the auditor of Summit County would assume no personal liability in the event a duplicate warrant be now issued.

Respectfully,
EDWARD C. TURNER,
Attorney General.

990.

BONDS—INTEREST OF SPECIAL ASSESSMENTS ARE TO BE TREATED AS PART OF IMPROVEMENT AND INCLUDED IN AMOUNT OF ASSESSMENTS.

SYLLABUS:

1. *Where bonds are issued in anticipation of the collection of special assessments for municipal improvements, the interest thereon is to be treated as part of the cost of the improvement and included in the amount of the assessments.*