

The above purchase of bonds appears to be part of an issue of bonds of the above city dated May 1, 1929. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers' Retirement System under date of June 18, 1935, being Opinion No. 4343.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

208.

BOND FORM—LOST OR DESTROYED WARRANT APPLICATION FOR DUPLICATE WARRANT.

SYLLABUS:

Form of bond under Section 246, General Code, prescribed.

COLUMBUS, OHIO, March 4, 1937.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: I am replying to your letter of recent date requesting an opinion of this office, which letter reads as follows:

"Referring to Section 246 of the General Code this department would respectfully ask your opinion relative to the 'Bond Application' which is referred to in the above mentioned Section. The particular question involved is the language of the Application and its binding effect."

You refer to Section 246, General Code, which section reads as follows:

"Whenever it is made to appear to the satisfaction of the auditor of state, by affidavit or otherwise, that any warrant on the state treasury by him issued has been lost or destroyed prior to its presentation for payment, and there is no reasonable probability of its being found or presented, such auditor may issue to the proper person a duplicate of such lost or destroyed warrant, provided that before issuing such duplicate said

auditor of state shall require of the person making such application a bond in double the amount of such claim, payable to the State of Ohio, with surety to the approval of said auditor and of the treasurer of state, and conditioned to make good any loss or damage sustained by any person or persons on account of the issuance of said duplicate and the subsequent presentation and payment of the original. The form of said bond is to be prepared by the attorney general and the bond when executed filed in the office of the treasurer of state. The duplicate warrant issued shall be plainly stamped or marked so that its character may be readily and easily ascertained, and in no event shall any liability attach to the treasurer of state on account of his paying any duplicate warrant issued under authority of this section."

It is noted that this section of the General Code refers to any warrant that has been lost or destroyed prior to its presentation for payment and satisfying the Auditor of State that there is no reasonable probability of its being found or presented and the requirement of the giving of a bond in double the amount of the claim in favor of the State of Ohio. This section of the General Code also requires that the form of bond be prepared by the Attorney General. Inasmuch as the Attorney General has not prepared such a bond form, the following form will be used in such cases:

"BOND

TO COVER ISSUANCE OF DUPLICATE WARRANT

Know All Men By These Presents:

The undersigned

(Principal)

as principal, and

(Name or names of surety)

and as surety, are hereby bound unto the State of Ohio, in the penal sum of.....

..... Dollars,

(Bond to be double the amount of claims)

to the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents.

Witness our hands this.....day of193.....

The condition of the above obligation is such, that where- as, on the.....day of.....193.....,

a warrant was issued by the Auditor of State upon the Treasurer of State for the sum of.....

..... Dollars being numbered.....on the books of

(No. of warrant)

said Auditor of State, payable to one.....

..... out of the State Treasury, (Payee)

which said warrant has been lost or destroyed, and said.....

..... (Payee)

has applied for the issuance of a duplicate warrant under authority of Section 246 of the General Code, effective May 19, 1914, which application has been granted.

Now, if said.....

(Payee-Principal)

shall hold and save the State of Ohio, free and harmless from and on account of all loss or damage sustained on account of the issuing and payment of said duplicate warrant and the subsequent presentation and payment of the original, then this obligation shall be void; otherwise it shall be and remain in full force and virtue in law.

..... Principal.

..... Surety.

..... Witness

By.....

The above bond and surety approved.....193.....

..... Auditor of State

..... Treasurer of State

If a bond, other than corporate, is given, the following certificate by County Auditor should be made:

I hereby certify that the security of the above bond is, after review of my records, in my opinion, sufficient for the amount specified.

(Seal)

..... Auditor.....County.

NOTE—If corporate bond be given the certificate of authority for the signer must be attached and not older than thirty days from date of bond, together with certificate from the Division of Insurance qualifying said surety company to do business in this state.

If a bond other than corporate is given, said bond must be signed by two freeholders resident of the county of the principal. The total equity in their combined property must be two times the penalty of this bond.”

You have inquired further concerning the “Bond Application.” The statute does not specifically require an application such as you refer to. The word “application” as used in this section refers only to the application to the Auditor of State by a person entitled to the warrant referred to for the issuance of a duplicate warrant. This application is solely for the satisfaction of the Auditor of State concerning its loss or destruction and the reasonable probability of its being found or presented for payment.

For your information, the following application form is suggested:

“DUPLICATE WARRANT APPLICATION

.....
(Name of Applicant) (Capacity of Applicant)
..... hereby
(Individual, Corporation or Partnership)
makes application to.....Auditor
of State, for the issuance of a duplicate of warrant No.
.....drawn in favor of.....
(Name of Payee)
and drawn on.....
(Specify the fund or appropriation)
and dated

Said Warrant was endorsed as follows:.....
..... and has not been
(List all endorsements in chronological order)
presented to the Treasurer of State for Payment.

The applicant will set forth here in narrative form the circumstances surrounding the loss or destruction of the Warrant herein referred to:

.....
.....
.....

This application to the Auditor of State for the issuance of duplicate of the above mentioned warrant is made for the purpose of acquainting said Auditor of State with the circumstances surrounding its loss or destruction and to enable him to determine whether there is any reasonable probability that said warrant will be presented for payment and for authority to submit a bond for the issuance of a duplicate of said warrant.

----- Witness -----	----- Applicant -----
Witness	Name of officer, if corporation, and his capacity."

You have further inquired concerning the binding effect of the language of the application and I have referred to such application as solely for the satisfaction of the Auditor of State as to the circumstances of the case. The binding document is the bond form, which is given only after the Auditor of State is satisfied, according to the statute, that there is no reasonable probability of the warrant being found or presented for payment.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

209.

CERTIFICATE OF PURCHASE—COUNTY AUDITOR—FEE
PAYABLE TO GENERAL FUND.

SYLLABUS:

The fee provided for in Section 5762, General Code, is not to be retained by the auditor as personal compensation but must be collected and paid over with the other fees and charges of this office to the county treasurer as required under Section 2977, General Code.

COLUMBUS, OHIO, March 4, 1937.

HON. E. DUDLEY HARRIS, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication which reads as follows: