

OPINION NO. 1006**Syllabus:**

A procedure whereby warrants for the compensation of employees of a county engineer's office are delivered to the county engineer who delivers them to his employees and secures a receipt from the employees at that time, does not meet the requirements of Section 325.18, Revised Code.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, April 28, 1964

Your request for my opinion reads in pertinent part as follows:

"(1) Are the statutory requirements fulfilled wherein the payrolls of the engineer's office are made up and approved and the warrants are prepared on the basis of the official payroll and turned over to the engineer before pay day. On pay day, the engineer's personnel take the payroll which contains the required statement of receipt on each set out to the various and numerous projects. As the men are handed their payroll warrants, they sign their name opposite the printed name on the payroll thus signing the required receipt statement. After this

time the signed payroll is returned to the auditor's office.

"(2) If this procedure is not a substantial and satisfactory compliance with section 325.18, Revised Code, then will it suffice or be in compliance if:

"a. The printed language required by the statute appears on the back of the warrant so that when the employee endorses the warrant he also signs the receipt, or

"b. Have the auditor take the warrant to the various points of distribution and obtain receipt signatures when he pays out the warrants, or

"c. Have all employees sign either a completed payroll, blank payroll, or a separate statement containing the required language of the statute, or

"d. Have all of the engineers and employees report to the auditor's office to receive their warrants over the counter and sign their names at the moment of receipt."

Section 325.18, Revised Code, reads as follows:

"Before the county auditor issues a warrant upon the county treasurer to any deputy, assistant, clerk, bookkeeper, or other employee provided for under section 325.17 of the Revised Code, for his compensation, such person shall sign a receipt which shall be in the following form: No., 19....

"Received of the (here recite the county or officer, as the case may be) by (here insert the name of the party receiving compensation).....dollars, in full for services as (here insert services) for..... ending....., 19...

"I hereby certify that I have rendered the services as herein stated, and that I have received the full sum set forth in the above receipt for my own use and benefit, and that I have not paid, deposited, or assigned, or contracted to pay, deposit, or assign, any part of such compensation for the use of any other person, or in any way, directly or in-

directly, paid, given, or contracted to pay or give, any reward or compensation for such position or the emoluments thereof.....
(Name of the party receiving money.) Such receipts shall be preserved and filed by the auditor."

Your attention is directed to Opinion No. 511, Opinions of the Attorney General for 1929, wherein it is stated in branch 2 of the syllabus:

"2. A state warrant is not 'issued' until it is delivered to the person entitled to it."

In this opinion the former Attorney General arrived at the conclusion above on the following basis:

"* * *They are non-negotiable and merely prima facie evidence of a valid claim against the corporation issuing them. Abbott on Public Securities, Section 450, and cases cited. They do, however, possess some of the characteristics of commercial paper and one of these characteristics is that delivery is essential to their validity. In Abbott on Public Securities, Section 448, it is said:

"'In common with other evidences of indebtedness, a warrant is not issued until it is delivered and this involves the question of its issue and delivery to the proper person.'

"In McQuillin on Municipal Corporations, Second Edition, Section 2406, it is said:

"'A warrant is not "issued" nor valid until delivered into the hands of a person authorized to receive it. It follows that if a municipal officer obtains possession of warrants before delivery to the payee, and collects payment thereof and then absconds, the payee may compel the issuance to him of new warrants.'

"In Stiffen vs. Long, 165 Mo. App. 254, 147 S.W. 191, it is said:

"'A county warrant is in legal effect a promissory note, and until delivered to the payee therein is a nullity and he has no title or right of possession.'

"In American Bridge Company vs. Wheeler, 35 Wash. 40, 76 Pac. 534, it is said:

"The issuance of a county warrant as required by Ballenger's Annotated Code, and Section 393, providing that the county auditor shall "issue" warrants for claims allowed by the county commissioners and when the warrant is issued the stub shall be carefully retained, is not limited to the mere drawing of the warrant but includes the delivery thereof to the person entitled thereto."

In Opinion No. 2525, Opinions of the Attorney General for 1940, a predecessor in office said at page 692:

"While your inquiry relates to a warrant of the county auditor drawn on the county treasurer, the principle is the same as if it were a warrant of the auditor of state. In each case title and control of the funds remain unchanged until the warrant has been drawn and issued by delivery to the payee or someone authorized to accept for the payee."

In this same opinion, it is further stated, at page 693:

"The controlling fact is that the auditor remains under obligation to issue such warrant until delivery has finally been made.

"* * *A warrant is not issued until delivered to the payee or a person or agent entitled to receive it, * * *"

I am in accord with the conclusion reached in the above quoted opinions.

If, as I conclude, issuance is completed by, and requires, a delivery of the warrant, it follows that, pursuant to Section 325.18, supra, the county auditor is required to secure a signed receipt, in the form specified, before delivering a warrant to the payee. The existing practice in your county -- set forth in paragraph (1) of your request -- does not meet this statutory requirement. The county engineer is not the agent of the county auditor in this situation but is purporting to act for his own employees. In effect there is a delivery before the required receipts are signed.

Assuming that in the hypothetical procedures outlined in paragraphs (2) (a) and (2) (c) of your request the warrants are first delivered to the county engineer, I am likewise of the opinion, for the same reason, that these procedures do not meet the requirement of Section 325.18, supra. There is, however, a substantial compliance with Section 325.18, supra, in the hypothetical procedures set out in paragraphs (2) (b) and (2) (d) of your request, for here, delivery of the warrant to the payee is preceded by a signed receipt or is made at the time that a receipt is given.

In specific answer to your question it is my opinion that a procedure whereby warrants for the compensation of employees of a county engineer's office are delivered to the county engineer who delivers them to his employees and secures a receipt from the employees at that time, does not meet the requirements of Section 325.18, Revised Code.