

1408

REGARDING A WARRANT OF THE AUDITOR OF STATE WHICH HAS BEEN STOLEN AFTER DELIVERY TO THE PAYEE AND THE ISSUING OF A DUPLICATE OF SUCH A WARRANT--§115.38, R.C.

SYLLABUS:

A warrant of the auditor of state which has been stolen after delivery to the payee and prior to presentment for payment is "lost" within the purview of Section 115.38, Revised Code, and before issuing a duplicate of such a warrant the auditor must require the person making the application to post the bond required by such section.

Columbus, Ohio, May 26, 1960

Prosecuting Attorney, Preble County  
Eaton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I request your opinion on the following:

"The Dixon-Israel School District building was burglarized. The Auditor of State's Warrant for \$10,741.86 was stolen along with other property. It is necessary that the State Auditor issue a duplicate warrant to replace the warrant stolen.

"Section 115.38 requires bond for the issuance of a duplicate warrant by the State Auditor of Ohio if the warrant has been destroyed or lost. It would appear that the present situation, stolen warrant, is not within the requirement of the statute. There is no possibility of a proper presentment at some future date of the stolen warrant. It is to be remembered that any holder of the stolen warrant would have an invalid title to the document; hence the impossibility of a proper presentment.

"The Opinion of the Attorney General No. 868 for 1957 would appear to support the proposition that the requirement of the statute be relaxed in the case of a stolen warrant.

"I will appreciate your early opinion, then, on the specific question. 'Is the Auditor of State required by section 115.38 of the Revised Code of Ohio to require the bond specified in the statute before issuance of a duplicate warrant for payment to replace a warrant which has been stolen?'

Regarding the issuance of a duplicate warrant, Section 115.38, Revised Code, provides :

"If the auditor of state is satisfied, 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, he may issue to the proper person a duplicate of such lost or destroyed warrant, provided that before issuing such duplicate he shall require of the person making the application a bond in double the amount of the claim, payable to the state, with surety to the approval of the auditor of state and of the treasurer of state, and conditioned to make good any loss or damage sustained by any person on account of the issuance of said duplicate and the subsequent presentation and payment of the original. The form of said bond shall be prepared by the attorney general. The bond when executed shall be 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 easily ascertained. The treasurer of state shall not be liable because of his paying any duplicate warrant issued under this section."

Thus, where the auditor *has issued* a warrant and such warrant has been lost or destroyed, he may issue a duplicate of such warrant; but must require a bond in double the amount of the claim *before such issuance*.

In the instant case the warrant was issued. This appears clear in that the warrant was stolen from the school district building and, therefore, must have been delivered. The question to be decided, therefore, is whether the stolen warrant may be considered to be "lost or destroyed."

In Webster's New International Dictionary, Second Edition, page 1460, the word "lost" is defined as:

"2.a Parted with; gone out of one's possession; \* \* \*."

In the Cyclopedic Law Dictionary, Third Edition, at page 681, it is stated:

"Property is lost in the legal sense of the word when the possession has been casually and involuntarily parted with, and not when the owner purposely and voluntarily places or deposits it in a certain place for safekeeping, although he may thereafter forget it and cannot find it. 44 Ore. 108, 113; 162 Mo. App. 165, 172."

It appears clear that property which has been stolen is "lost" to the owner just as if it had otherwise been involuntarily parted with. Accordingly, I conclude that a warrant which has been issued by the auditor and then stolen is "lost" within the purview of Section 115.38, *supra*.

Regarding the possibility of a stolen warrant being presented for collection by the holder, such presentment would appear to be no more impossible than would the presentment of any lost warrant. Thus, I do not feel that the presentment question should distinguish a stolen warrant from any other lost warrant under the statute.

Opinion No. 868, Opinions of the Attorney General for 1957, page 366, to which you refer, held that a warrant drawn by the auditor in favor of a payee is not issued until delivered to such payee; and if such warrant is lost or destroyed before delivery, Section 115.38, Revised Code, does not apply to the issuance of a substitute warrant to such payee. As the warrant in the instant case was delivered to the payee before being lost, the conclusion of Opinion No. 868, *supra*, does not appear to be here pertinent.

Accordingly, it is my opinion and you are advised that a warrant of the auditor of state which has been stolen after delivery to the payee and prior to presentment for payment is "lost" within the purview of Section 115.38, Revised Code, and before issuing a duplicate of such a

warrant the auditor must require the person making the application to post the bond required by such section.

Respectfully,

MARK McELROY

Attorney General