1110.

WARRANT—DRAWN BY STATE AUDITOR UPON STATE TREASURER—*ISSUED* WHEN *DELIVERED* BY AUDITOR TO LAWFULLY AUTHORIZED RECIPIENT—STATUS LOST OR DESTROYED WARRANT—PROOF—BOND—DIRECTOR OF HIGHWAYS—MAY GIVE SURETY BOND TO AUDITOR TO OBTAIN DUPLICATE WARRANT—PAYMENT—LEGISLATIVE APPROPRIATION—SECTIONS 6, 246, G. C.

SYLLABUS:

1. When a warrant is drawn by the Auditor of State upon the Treasurer of State, it does not become issued until delivered by the Auditor to the person lawfully authorized to receive it.

2. If a warrant is drawn by the Auditor of State upon the Treasurer of State in favor of a particular payee but is lost or destroyed before delivery, the Auditor of State is not authorized by Section 246, General Code, to require a bond from the payee as a condition precedent to the issuance and delivery of a substitute warrant, there having been no issuance of the lost or destroyed warrant.

3. When the Auditor of State has drawn a warrant on the Treasurer of State and delivered it to a state official in order to enable him to pefom his official duties and such warrant becomes lost or destroyed before delivery by such official to the payee, such public official may under authority of Section 246, General Code, furnish proof of loss or destruction and a bond conditioned as specified in such section.

4. When a warrant drawn by the Auditor of State on the State Treasurer has been delivered to the Director of Highways of the State of Ohio for the purpose of enabling such official to perform some official duty, the Director of Highways may under authority of Section 6, General Code, give a surety bond to the Auditor of State in order to comply with Section 246, General Code, in obtaining a duplicate warrant and pay therefor from funds appropriated by the legislature to his department for such purpose.

COLUMBUS, OHIO, August 29, 1939.

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

DEAR SIR: Your request for my opinion reads:

"Some time ago this office issued its warrant number 333, in the sum of eight thousand dollars ($8,000.00), payable to the Treasurer of N representing a distribution from the Undivided Liquor Permit Fund. Subsequent to the drawing of this war-

rant, this office received an affidavit from the Treasurer of N to the effect that he had not received the above warrant.

The City Solicitor of N has requested that this office issue another warrant to the City of N in lieu of the original warrant, which is now lost and remains outstanding and unpaid, according to the records of our office. We have refused to issue a warrant to the City of N, inasmuch as we feel that we are unauthorized to issue a warrant in lieu of the original warrant until and unless the City of N executed a bond to the State of Ohio in accordance with General Code Section 246.

The Solicitor of N has notified our office that the City insists on their right to have the Auditor of State draw and deliver a warrant in lieu of the original warrant, and particularly bases his contention on Attorney General's Opinion in 1929, number 511, which held that a state warrant is not issued until it is delivered to the person entitled to it.

Perhaps a few words as to the procedure of this office would be of some interest to you at this point. In the distribution of the Undivided Liquor Permit Fund, this office prepared a disbursement journal containing therein the names of all the townships and municipalities of the State, together with the amount of money payable to each municipality and township. The disbursement journal goes through certain bookkeeping processes in our office, and finally warrants are drawn in conformity with the information appearing on the disbursement sheet or journal. Each warrant drawn to a certain municipality or township is given a number and the warrant number of each particular warrant is then affixed by stamp to the disbursement sheet in the proper column to identify each warrant drawn and its number in reference to the township or municipality to which it relates. In addition, at the time the original warrants are prepared, facsimile copies of each and every warrant are made and retained in this office as a part of our records. After the original warrants are drawn they are then placed in envelopes and in the customary and usual routine of the office these warrants are placed in a mail box.

Our records show that warrant number 333 was drawn in favor of the City Treasurer of N and this warrant, together with other warrants, in the normal routine, were mailed directly by this office. However, the Treasurer of N, to whom the above warrant was drawn, states by affidavit that he has not received the above numbered warrant.

Due to the foregoing facts, we desire your advice as to whether or not it is legally proper for the Auditor of State to draw and place in the mails a duplicate warrant in lieu of the

above noted warrant without requiring the City of N to supply a bond in accordance with Section 246 of the General Code. In the event it is your advice this bond must be furnished, kindly advise us as to the proper and legal steps necessary to be taken by the City of N in order to constitute the bond a valid and binding obligation.

It should be understood that in the above situation the warrants after being drawn by the Auditor of State are placed by employes of the said office directly into a mail box of the United States Post Office Service. As soon as the warrants are written by the office of the Auditor of State, our rubber stamp mark is affixed on the outside of the voucher relating to the warrants written, or according to the interpretation of this office for many years the warrants when written on a certain date are considered to have been issued on that date.

It is true of course that in many cases the warrants drawn or issued by the Auditor of State are not transmitted by him directly to the payee, but are first placed in the custody or possession of an administrative department of the State who then causes the warrants to be delivered to the payee.

The facts in the above noted N case are different than those presented in the above cited Attorney General's opinion in that in the latter case the warrants were obtained in lawful manner from the Auditor of State's disbursing office by representative of the Department of Public Welfare, and the warrants were obtained and forged, while the warrants were in the possession of the department.

We desire to have your opinion and advice as to the issues presented in the foregoing discussion. It is of course true that the existing legal opinions or interpretations in regard to Section 246 of the General Code are very meager. In your discussion of the problems presented in this letter, we would also appreciate your interpretation as to what type of persons may be classified as 'proper persons' who may make application and give a bond within the meaning of the above Section 246.

Furthermore, in many cases where there is no question in regard to the necessity of the bond being supplied, many public officials have made application for the issuance of a duplicate warrant but have refused to execute the prescribed form of bond required by Section 246. These public officials have contended that the faithful performance bond which they and their bonding companies have executed for the proper performance of the duties of the office to which they were elected or appointed is sufficient to meet the requirements of the above noted section with-

out a particular bond similar to the sample herein enclosed being executed.

Kindly advise us as to whether or not the faithful performance bond of a public official is legally sufficient to comply with the requirements set forth in General Code Section 246 in the absence of a particular bond prescribed by the above noted section.

Your attention is furthermore directed to the third paragraph in Section 6 of House Bill 674, 93rd General Assembly. This section provides certain provisions whereby the Auditor of State shall issue his warrant for petty cash to the proper official. In the event the warrant becomes lost, is it legally necessary for the official to make application for a duplicate warrant, and execute with signed surety the bond required by General Code Section 246?

For your information, we are enclosing herewith a specimen form of application and bond which have been in use by this office for many years.

Any advice that you may give us that will assist us in the proper application of the above noted section of the General Code will be greatly appreciated. We would like to have your advice as to whether there is any distinction in the legal requirements in the case of lost warrants where the warrants are mailed directly from this office and in the case where an administrative department of the State obtains the warrants from our office and mails the warrants."

Section 246, General Code, referred to in your inquiry, reads:

"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 tresurer of state on account of his paying any duplicate warrant issued under authority of this section."

In discussing the obligation of the parties with reference to a lost or destroyed negotiable instrument, it must be borne in mind that a warrant or check is not an extinguishment of an obligation of the issuer. It is but an instrument or means by virtue of which the obligation may be extinguished if paid upon presentment. It should also be remembered that the loss or destruction of such type of written instrument in no way affects the liabilities on it, or the validity of the demand for which it was issued. McCann v. Randall, 147 Mass., 81; Belle Plaines First National Bank v. McConnell, 103 Minn., 340. It has been consistently held that a holder of a promissory note which has been lost or destroyed may recover thereon against the maker upon satisfactory proof of such loss or destruction. In most, if not all, jurisdictions the court may require the plaintiff to give bond to save the maker harmless from any damage he may suffer by reason of having paid such obligation without surrender of the note. Thayer v. King, 15 Ohio, 242; 38 C. J., 265, and cases there cited. In many jurisdictions if the negotiable instrument has been lost after maturity, recovery is permitted without requiring a bond for the reason that the finder cannot then become a holder in due course. See 38 C. J., 263, and cases there cited.

In order to answer your first inquiry, we must know the final act which causes a warrant to become issued, for Section 246, General Code, applies only to warrants which have been issued. Even before the adoption of the Negotiable Instrument Law the courts held that delivery of a written instrument was absolutely necessary to the validity thereof. This was equally applicable to instruments whether for the payment of money or otherwise. Clark v. Boyd, 8 Ohio, 56; Portage County Branch Bank v. Lane, 8 O. S., 405; DeCamp v. Hamma, 29 O. S., 467. The mere fact that a draft or warrant is prepared and signed by the drawer does not create any obligation or grant any rights. This attribute is recognized by the Negotiable Instrument Law (Sec. 8121, G. C.). This section contains the following language:

> "Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect to it."

Courts have consistently held that the issuing of a negotiable instrument is the original delivery of the instrument complete in form to the person who takes it as the holder. Sec. 8295, G. C.

Vander Ploeg v. Van Zunk, 135 Ia., 350; Board of Commissioners v. Tollman, 145 Fed., 753; Bank of Houston v. Day, 145 Mo. Appeals, 410; American Bridge Company v. Wheeler, 35 Wash., 40; Zimmerman v. Timmermann, 193 N. Y., 486; City of Austin v. Valle (Tex.), 71 S. W., 414; O'Neill v. Yellowstone Irrigation District, 49 Mont., 492; Burr v. Beckler, 264 Ill., 230.

In the case of American Bridge Company v. Wheeler, 35 Wash., 40, the court held that a county warrant was not issued until it was actually delivered into the hands of the person authorized to receive it. Until the warrant is issued or delivered to the payee or holder with intent to impart validity thereto, the maker may do with it as he deems proper. He may destroy it if he chooses. Burr v. Beckler, supra.

The entire property right in the warrant is in the issuer until delivery for the purpose of giving effect thereto as a means of payment of money and consequently if lost or destroyed during that time he must bear the loss.

If the warrant has been actually destroyed before delivery no obligation could ever arise thereon, for it was never issued and can never be presented for payment. However, if it has been lost before delivery and thereafter finds its way into the hands of a holder in due course, a valid delivery is conclusively presumed and even before it comes into the hands of a holder in due course there is a rebuttable presumption of a valid delivery. Sec. 8121, G. C.

If the warrant in question was lost after having been prepared and signed by the State Auditor but before it had been delivered to the Treasurer of N, it has never been issued. There is no language in Section 246, General Code, authorizing the Auditor of State to receive a bond from the payee as a condition precedent to having a duplicate warrant issued to him. If no original warrant has been issued, it is axiomatic that there can be no duplicate thereof. Sections 241 to 245, both inclusive, General Code, place the obligation on the Auditor of State to issue warrants on the Treasurer of State for the payment of moneys. Upon entering upon the duties of his office the auditor of state files his bond with the state. Sec. 236, G. C. His deputies are bonded to him, (Sec. 238, G. C.) for the faithful performance of their duties, one of which is the issuing of warrants in proper cases.

If, therefore, in the case of the warrant prepared by the auditor of state for the city of N there has been no delivery of the warrant to N, such warrant has never been issued. It necessarily follows that the city of N may not be required to execute a bond in order to have a duplicate warrant issued in lieu of a warrant that never had been issued. The term "duplicate" carries with it the connotation of being a replacement of an original. It would scarcely be possible to issue a duplicate of a warrant that was never issued. The first issuance would necessarily be an original.

If the warrant is lost prior to the performance of the last act necessary to complete its issuance, the loss, if any, would be that of the auditor of state and not that of the person to whom it was intended that it should be delivered.

My opinion as above expressed is the same as that expressed by one of my predecessors in office, (1 O. A. G., 1929, 773) the syllabus of which reads:

> "1. When state warrants are drawn by the state auditor in payment of obligations against the state and such warrants are lost before their delivery to the payee, or his agent, and without any fault on the part of the payee, the said payee is entitled to have warrants drawn and delivered to him in payment of the obligations for which the lost warrants had been drawn.
>
> 2. A state warrant is not 'issued' until it is delivered to the person entitled to it."

If the foregoing be correct, before you may require a bond from the payee, under authority of Section 246, General Code, it is necessary to establish the fact of delivery of the warrant. It is not the province of the office of the attorney general to determine questions of fact. Such determination must be made by the interested parties or the courts. However, I may summarize certain rules which have been adopted by the courts to aid them in the determination of facts.

In the case of Garthwaite v. Bank of Tulare, 134 Cal. 237, the court held that if a bank check is shown to have been mailed to the payee but was never received by him, the title to the check did not pass from the sender but remained the property of the remitter. In such case the check was stolen from the mails and cashed by means of a forged indorsement. The remitter thereupon recovered against the bank by reason thereof.

Prior to the year 1913, the cases generally held that if it was shown that a letter was delivered to the postal authorities, properly addressed and with sufficient postage attached, there was a presumption that it was delivered to the payee; that upon receipt of such evidence the burden shifted to the payee to show that neither he nor his agent received the letter. This presumption was based upon the proposition that the sender, by depositing the letter in the mail, lost all control over it. In 1913 the postal authorities promulgated Sections 552 and 553, United States Post Office Regulations which permit the sender to withdraw from the mails an article, which he has mailed, at any time before actual delivery. Such presumption, therefore, is no longer supported by its original reasons. (See notes appearing in 9 A. L. R. 386 and 92 A. L. R. 1062 and cases there cited.) Upon reason it would appear that in order to raise such

presumption, there would now have to be presented evidence that the letter had not been withdrawn from the mails by the sender.

A delivery of a warrant or other negotiable instrument to the payee or to his agent who was duly authorized to receive the same would constitute such a delivery as to constitute or complete an issuance thereof.

> Bank of Houston v. Day, 145 Mo. App. 410.
> Vander Ploeg v. Van Zunk, 135 Ia., 350.
> See also annotations in 9 A. L. R. 386 and 92 A. L. R. 1062.

If the payee of the warrant directed you, as auditor of state, to mail his warrant to him at an address given, then the postal authorities would be the agent of the payee, and your delivery of the warrant to such authorities would be an issuance of the warrant, at least if you did not recall the letter enclosing the warrant from the mails.

If, however, it was your duty to issue the warrant and you selected the postal authorities to make the delivery for you, then the postal authorities would be your agent, and if your agent does not complete the delivery, the ordinary rules of agency would indicate that the liability was yours. The presumption as herein above described would aid in proof of delivery but could be rebutted by evidence showing that there was, in fact, no delivery by the postal authorities, or that delivery was not accepted by the remittee.

In the event that there has been no delivery of the warrant in question to the person for whom it was issued or his duly authorized agent, then it is my opinion it is your duty to issue to him a proper warrant similar to the one which you state was prepared. The fact that you once prepared the warrant and mailed it would tend to show that the claim for which it was issued was legally proper. You are not authorized by law to require a bond from him as a condition precedent to the delivery of the new warrant. To protect yourself and the state you may stop payment on the former warrant or take such other lawful steps as might tend to prevent the lost warrant being paid, in the event that it may be found.

If, however, the fact is determined that there was a proper delivery of the warrant to the city of N, or an issuance of the warrant, then you should require the city of N to furnish you with the affidavit and bond specified in Section 246, General Code.

Assuming the warrant to have been lost or destroyed after issuance, you inquire who is a "proper person" to make the application and give the bond specified in Section 246, General Code. The language contained in the section is "issue to the proper person a duplicate of such lost or destroyed warrant * * *". You will note that the phrase "proper person" is used in connection with reference to the person to whom the *duplicate warrant* is to be issued. It is axiomatic that a duplicate warrant might not be considered as a duplicate unless it was exactly alike the original

not only as to amount but as to the payee. The phrase "proper person", as used in the section, might, therefore, be the person named in the original warrant. It is not necessary to decide such question for the purpose of this opinion. You will note, however, that the section does not state that the affidavit be signed by the person to whom the duplicate warrant is to be issued. In fact, the auditor of state need not require an affidavit as a condition precedent to the issuance. The language of the section is "Whenever it is made to appear *to the satisfaction* of the auditor of state, *by affidavit or otherwise*" that the warrant has been lost or destroyed, the auditor of state may issue a duplicate warrant. From such language it is immaterial whether any affidavit is ever delivered to the auditor of state in connection with the issuance of the duplicate warrant. If he is satisfied by reason of some other type of evidence that the warrant has been lost or destroyed, he may issue the duplicate warrant. It seems hardly probable that the auditor of state would deem an affidavit of an owner of a lost warrant to be satisfactory evidence of the loss or destruction of a warrant, if it has been established that he could not possibly have any knowledge of the facts with reference to the loss or destruction. It seems to me that you are authorized to receive the affidavit of such person or persons as may know the facts concerning the loss or destruction of the warrant, whether or not the affiant has any proprietary interest in the lost warrant.

You inquire who may make the application and give the bond required by the section. The statute does not specify the person who may make application for the duplicate warrant. Section 2293-32, General Code, makes a somewhat similar provision for the issuance of duplicate bonds, notes, checks, or certificates of indebtedness of a subdivision when they become lost or stolen. Such section specifically provides that the duplicates may be issued to the holders of the lost instruments, rather than to the person who was the original payee. Section 8673-17, General Code, gives authority to a court of competent jurisdiction to require the issuance of a new stock certificate in lieu of one which has been lost or destroyed, when a bond is given to protect the issuer from loss occasioned thereby. Similar provision is made in Section 8623-30a, General Code. In none of these sections has the Legislature designated the person who may make application for the duplicate. It would seem that the Legislature, in the enactment of Sections 8623-30a and 8673-17, General Code, had in mind the provisions of Section 11241, General Code, which require any petition in the court to be in the name of the real party in interest and the decisions of the court with reference thereto. The Legislature, knowing that a petition could be filed in no other manner, intended to adopt such procedure for the issuance of duplicate stock certificates. Under authority of such section, courts have held that the action can be brought by the equitable owner, Cushman v. Welsh, 19 O. S. 536; a person claiming some equity in the instrument, Kernohan v. Durham, 48 O. S. 1; a

person having title for collection only, Wayne v. Minor, 6 O. Dec. Repr. 602. In fact, mere possessory title has been held to be a sufficient interest to enable a party to maintain an action for the recovery of property of which he is entitled to possession.

Since the Legislature has not prescribed a specific person who *must* make the application for the issuance of a duplicate stock certificate, a municipal or state warrant, it would appear that such application may be made by any person who has a real or substantial, as distinguished from a fanciful, interest in the existence of the warrant or a duplicate thereof, and may execute a bond with surety to the approval of the auditor of state as authorized by Section 246, General Code.

You inquire whether when a public official, who has filed a bond for the faithful performance of the duties of his office, makes an application with you for the issuance of a duplicate warrant he is required also to file a bond of the type mentioned in Section 246, General Code, or whether the bond of his office is sufficient. Section 246, General Code, provides that the bond to be filed as a condition precedent to the issuance of the warrant must be (1) in penal amount, double the amount of the claim being paid through the medium of the warrant and (2) "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 bond of most public officials might meet the requirement of the first of these conditions, as to amount. When we consider the condition of the bond required by Section 246, General Code, it is not so apparent that a bond of a public official, conditioned for the faithful performance of the duties of his office, may be substituted therefor. The conditions of a bond conditioned for faithful performance of the duties of an office are not violated by an honest error of judgment, an honest mistake or want of skill where discretion is placed in the official as to the method of performance.

It is generally held that a public official and his bondsmen are not liable under such type of bond for loss unless it be shown that there has been some negligence, violation on express statutory duty or wilful omission on the part of the official. In other words, if the loss was occasioned by an act of God or a public enemy, burglary, larceny, fire, flood or other independent cause, the bondsman of public officials on a bond, conditioned for the faithful performance of the duties of his office, would not be liable. Seward v. Surety Company, 120 O. S., 47, 50. In the bond required by Section 246, General Code, the liability on the bond is absolute whether or not the loss of the warrant has been free from negligence. It would seem that a so-called "faithful performance" bond would offer but little protection to the issuer of a duplicate negotiable warrant which has been lost or destroyed without the fault of the then custodian thereof. The purpose and intent of Section 246, General Code, is to save the State of Ohio, as well as the Auditor of State, harmless by reason of its issuing a

duplicate warrant without the cancellation of the original. The language of the statute contains no exception. The apparent intent and purpose of the legislature was not to create exceptions thereto. I am not unmindful that many warrants are issued to or for the benefit of a state department, and that there is a presumption that the State is not to be bound by a statute unless it is clearly made so. It is also an established rule of law that when the sovereign seeks the benefit of a statute it likewise assumes the liabilities imposed by such statute. State v. Buttles, 3 O. S., 309; Cleveland Terminal and Valley Railroad Company v. State, ex rel. Attorney General, 85 O. S., 251. I am therefore of the opinion that if a public official makes application for the issuance of a duplicate warrant he must file a bond meeting with the requirements of Section 246, General Code, as a condition precedent to the receipt of such warrant.

You further inquire whether there is any distinction between the procedure to be followed by your office when the warrant is delivered by you to a public official in order to enable him to make delivery thereof in connection with the exercise of the duties of his office and is lost or destroyed after being so delivered to such officer, and a case where you prepare a warrant and mail it to the payee. In the first of such cases the warrant might be considered as at least conditionally issued upon delivery to the public official in order to enable him to perform some duty imposed upon him by law. In this regard your attention is called to Section 1201, General Code. That section provides for the appropriation of property by the Director of Highways and outlines the procedure to be followed. Where the Director is unable to purchase property which may lawfully be acquired, he must enter a finding on the journal of the department that it is necessary for the public convenience and welfare to appropriate such property. This finding must contain a definite, accurate and detailed description thereof and the name and residence of the owner, if reasonably ascertainable. The section then provides as follows:

> "The director shall in such finding also fix what he may deem to be the value of such property appropriated, together with damages to the residue, if any, *and deposit the value thereof, together with such damages, if any, with the probate court or the court of common pleas of the county within which such property, or a part thereof, is situated,* for the use and benefit of such owner or owners, and thereupon the director shall be authorized to take possession of and enter upon said property for any and all such purposes. * * *" (Emphasis the writer's.)

Obviously, the Director can only obtain these funds by voucher drawn upon your office. If in such case the court should hold such to be an issuance, you would be authorized to require a bond as a condition precedent to the issuance of a duplicate warrant. As hereinbefore pointed out,

where you undertake the delivery of a warrant prepared by you there would be no issuance of the warrant until there was a delivery thereof with intent to make it effective.

I have received a request for opinion from the Department of Highways asking whether such department has authority to furnish a surety bond where a warrant has been lost or destroyed after coming into the possession of such department but before delivery to the payee, and if so whether the premium for such bond may be paid from available funds appropriated for the use of such department. Since such inquiry is related to those presented in your request, I am taking the liberty of discussing it herein. Having held that such official is required to furnish a bond as a condition precedent to receiving a duplicate warrant, I need not again consider that question.

Section 6, General Code, in so far as is material to the second of such inquiries, reads:

> "* * * In all cases where an elective or appointive state officer is required by law to furnish bond, a surety company bond may be given and the annual premium in such cases shall be paid from the funds appropriated by the general assembly to the various departments, boards and commissions for such purpose. The provisions of this section shall not be deemed to prevent the giving of a personal bond with sureties approved by the officials authorized by law to give such approval."

Since the Director of Highways is an appointive state officer and the performance of his duties requires the obtaining of such bond, such section would appear to authorize the payment of the premium on the bond required by Section 246, General Code, from available appropriated funds.

Specifically answering such inquiries, it is my opinion that:

1. When a warrant is drawn by the Auditor of State upon the Treasurer of State, it does not become issued until delivered by the Auditor to the person lawfully authorized to receive it.

2. If a warrant is drawn by the Auditor of State upon the Treasurer of State in favor of a particular payee but is lost or destroyed before delivery, the Auditor of State is not authorized by Section 246, General Code, to require a bond from the payee as a condition precedent to the issuance and delivery of a substitute warrant, there having been no issuance of the lost or destroyed warrant.

3. When the Auditor of State has drawn a warrant on the Treasurer of State and delivered it to a state official in order to enable him to perform his official duties and such warrant becomes lost or destroyed before delivery by such official to the payee, such public official may under authority of Section 246, General Code, furnish proof of loss or destruction and a bond conditioned as specified in such section.

4. When a warrant drawn by the Auditor of State on the State Treasurer has been delivered to the Director of Highways of the State of Ohio for the purpose of enabling such official to perform some official duty, the Director of Highways may under authority of Section 6, General Code, give a surety bond to the Auditor of State in order to comply with Section 246, General Code, in obtaining a duplicate warrant and pay therefor from funds appropriated by the legislature to his department for such purpose.

Respectfully,
THOMAS J. HERBERT,
Attorney General.

1111.

LEASE—CANAL LAND, STATE WITH GOSHEN BRICK & CLAY CORPORATION, RIGHT TO OCCUPY AND USE FOR CROSSING RIGHT OF WAY PURPOSES, DESIGNATED PORTION, OHIO CANAL PROPERTY, OXFORD TOWNSHIP, TUSCARAWAS COUNTY.

COLUMBUS, OHIO, August 29, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted to me for my examination and approval, a canal land lease in triplicate, executed by you as Superintendent of Public Works and as Director of said Department for and in the name of the State of Ohio, to the Goshen Brick & Clay Corporation, of Newcomerstown, Tuscarawas County, Ohio.

By this lease, which is one for a stated term of fifteen years, and which provides for the payment of an annual rental of $12.00, there is leased and demised to the lessee above named, the right to occupy and use for crossing right-of-way purposes that portion of the Ohio Canal property located in Oxford Township, Tuscarawas County, Ohio, which is more particularly described as follows:

> "Beginning at a line between the lands formerly owned by R. Dougherty and the lands formerly owned by John H. Asher, at Station 2814+00, of G. F. Silliman's Survey of said canal property, and extending thence in a westerly direction fourteen hundred and forty-three (1443') feet, more or less, to a point being at or near Station 2828+43, and excepting therefrom any of the above described property that may be now occupied by a state highway."