

or machinery *unless authorized by the state relief commission.*

Subject to the provisions of this act, poor relief may take the form of either work or direct relief or both and may be provided through the furnishing of commodities and services to the persons aided."

It is therefore my opinion that since January 31, 1937, and until the effective date of Amended Substitute House Bill No. 65, *supra*, no proceeds of bonds issued under the provisions of House Bill 501 could have properly been expended for the purchase of materials to be used by the women working for WPA making up clothing for the needy poor of your county, and that since the effective date of Amended Substitute House Bill No. 65, namely February 11, 1937, proceeds of bonds issued under and by authority of House Bill 501 may properly be expended for such purposes until April 15, 1937, after proper permission has been obtained by the State Relief Commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General

223.

COUNTY WARRANTS, LOST—ISSUANCE OF DUPLICATE WARRANT—AUDITOR MAY REQUIRE BOND OF INDEMNITY—AUDITOR'S WARRANT IS NOT A CHECK.

SYLLABUS:

1. *In the event a warrant issued by a county auditor upon the county treasury is lost or destroyed before redemption, there is no mandatory duty imposed upon the county auditor to require that there be issued to him an indemnity bond to insure himself against any loss occasioned by reason of issuance of a duplicate warrant, should the auditor, in his discretion, see fit to issue such duplicate warrant; but the auditor may refuse to issue such duplicate warrant in the absence of such bond. Opinions of the Attorney General, 1915, Vol. 1, page 553 overruled and Opinions of the Attorney General, 1922, Vol. 1, page 481 followed.*

2. *A county auditor's warrant is not a check within the meaning of Section 8291, General Code and, therefore, the provisions of Section 8291 are not applicable to it.*

COLUMBUS, OHIO, March 9, 1937.

HON. FERDINAND E. WARREN, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR: I am in receipt of your recent letter as follows: _

"The County Auditor has asked me to secure your opinion on the following:

The County Auditor on the 4th day of November, 1936, issued a certain county warrant in the sum of three hundred dollars to the Perry Township Trustees, Putnam County, Ohio. The warrant was mailed to the Trustees and received by their Clerk, who endorsed the warrant and mailed it to the Trustees' bank for deposit. The warrant never arrived at the bank and inasmuch as a mail robbery occurred the following day, it is believed that the warrant was in one of the stolen bags of mail. The warrant has never turned up. The County Auditor is going to issue a duplicate warrant for the sum of three hundred dollars to the Township Trustees and desires to know whether he must secure a bond of indemnity from the Trustees, under the provisions of General Code 2293-32.

A further question arises under the same set of facts. The warrant has been out for a number of months and by virtue of 8291 General Code, a check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. General Code 8290 defines a check as a bill of exchange drawn *on a bank* and payable on demand. The warrant in this case was drawn on the County Treasurer and not on a bank. Would the discharge of liability provided for in Section 8291 apply to the warrant?"

Your first question is whether a county auditor is required under Section 2293-32 of the General Code to obtain a bond before issuing a duplicate warrant. This office in an opinion appearing in Opinions of Attorney General for 1915, Vol. 1, page 553 held that it was a duty incumbent upon the auditor to issue a duplicate warrant where the original has been lost or destroyed. In a later opinion, however, appearing in Opinions of Attorney General for 1922, Vol. 1, page 481 without referring to the 1915 opinion this office reached a contrary conclusion. The syllabus is as follows:

"1. Section 2570 G. C. which provides for the issuance of warrants upon the county treasury by the county auditor,

makes no provision relative to the issuing of duplicate warrants, and there is no authority of law enabling such official to issue a duplicate warrant upon the county treasury, in lieu of one lawfully and previously issued, but which has been lost in the mails.

2. Although the General Code makes no provision authorizing a county auditor to issue a duplicate warrant in lieu of one issued, but lost or destroyed before redemption, it would seem in such cases, that a practical solution of the difficulty may be found in following the general policy of Section 246 G. C., in which event the county auditor should require sufficient security to insure himself against any loss occasioned by reason of the issuance of said duplicate warrants."

The foregoing opinion rendered June 12, 1922, made no reference to the case of *State, ex rel vs. Billig*, 104 O. S. 380, which was decided March 21st of that year. This case in my judgment supports the conclusion reached by this office in the 1922 opinion. The second branch of the syllabus is as follows:

"Mandamus will not lie against a county auditor to compel him to issue new warrants against a fund when proper warrants had theretofore been issued by him, payable to the relator 'or order,' when the sole ground for relief asked was the failure of the auditor to insure delivery of the original warrants to the payee in person."

In your letter you specifically ask whether or not a county auditor is required under Section 2293-32 of the General Code to obtain a bond before issuing a duplicate warrant. No reference was made to that section in either of the former opinions of this office nor in the *Billig* case, supra. The section reads as follows:

"Whenever bonds, notes, checks or certificates of indebtedness, issued by a subdivision or other political taxing unit of this 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.”

It is perfectly clear that a warrant is not a bond, note or certificate of indebtedness issued by a subdivision or taxing unit. The statute, however, also refers to checks and as to this Section 8290, General Code defines the term “check” as follows:

“A check is a bill of exchange drawn on a bank payable on demand. * * *”

In view of the fact that a county warrant is not drawn on a bank but on the treasury of a county, it is my judgment that Section 2293-32, *supra*, has no application to such warrants.

In view of the foregoing and in specific answer to your first question, it is my opinion that in the event a warrant issued by a county auditor upon the county treasury is lost or destroyed before redemption, there is no mandatory duty imposed upon the county auditor to require that there be issued to him an indemnity bond to insure himself against any loss occasioned by reason of issuance of a duplicate warrant, should the auditor, in his discretion, see fit to issue such duplicate warrant; but the auditor may refuse to issue such duplicate warrant in the absence of such bond.

In your second question you inquire as to whether or not the county auditor may be discharged from liability on a warrant which is not presented for payment within a reasonable time under the provisions of Section 8291, General Code. This section provides as follows:

“A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.”

As herein above indicated warrants drawn on the treasurer of a county are not checks since these instruments are defined in Section 8290, *supra*, as bills of exchange drawn on a bank payable on demand. It is accordingly my opinion that your second question must be answered in the negative.

Respectfully,

HERBERT S. DUFFY,
Attorney General