

2525.

LOST WARRANT — WARRANT NOT ISSUED UNTIL DELIVERED TO PAYEE, PERSON OR AGENT, ENTITLED TO RECEIVE IT — IF LOST BEFORE DELIVERY, DUTY OF AUDITOR TO ISSUE DUPLICATE — FUNDS APPROPRIATED UNDER SECTION 5541-8 G. C.—DUE TOWNSHIP TRUSTEES FROM COUNTY — PAID BY WARRANT OF COUNTY AUDITOR.

SYLLABUS:

*Where funds appropriated under authority of Section 5541-8, General Code, are due to township trustees from the county, it is the duty of the county auditor to draw and issue a warrant therefor. A warrant is not issued until delivered to the payee or a person or agent entitled to receive it, and, if lost before such delivery, it is the duty of the auditor to issue a duplicate warrant.*

Columbus, Ohio, July 15, 1940.

Honorable. Hubert D. Lappen, Prosecuting Attorney,  
Logan, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads:

"Sometime last year the auditor of Hocking County mailed to the trustee of Laurel Township his warrant for their proportionate share of gasoline tax. That warrant has never been returned to the auditor by the postoffice department as not having been delivered. However, the trustees disclaim any knowledge of having received said warrant.

It is my understanding that the auditor of this county cannot issue a new warrant to said trustees without them giving a personal bond in double the amount of the warrant to the auditor, conditioned that they will take care of any loss or damage accruing by his issuing of another warrant.

Will you kindly tell me if you know of any other way that this matter can be handled in order that the trustees can obtain their money?"

While you have not stated definitely what gasoline tax was distributed by your county auditor in the process of which the Laurel Township warrant was lost, I assume it was a distribution being made of the funds created under authority of Section 5541 of the General Code.

Provision for distribution of the share of the townships is found in Section 5541-8, General Code, which is in part as follows:

" \* \* \*

Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township.

\* \* \* "

After such funds have been received by the county treasurer, they are disbursed to the township trustees upon warrants of the county auditor drawn on the county treasurer, as provided in Section 2570 of the General Code. The mere preparation of a warrant and signing thereof by the auditor is insufficient to effect the transfer of the funds to the township trustees. To become valid and effective the warrant must have been issued, that is, actually delivered into the hands of the township trustees.

Dillon in his work on *Municipal Corporations*, Volume II, 5th Edition, p. 1287, §851, says:

“To give a warrant validity, it is essential that it should be delivered to the person entitled thereto.”

The same conclusion is reached by McQuillin on *The Law of Municipal Corporations*, Revised Volume 6, 2nd Edition, p. 88, §2406, wherein it is stated:

“A warrant is not ‘issued’ nor valid until delivered into the hands of a person authorized to receive it.”

The effect of the failure of the auditor of state to deliver a warrant to the payee was discussed in my opinion No. 1110, reported in 1939 *Opinions of the Attorney General*, p. 1605. The first two branches of the syllabus thereof read:

“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.”

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.

The rights of the parties and the procedure for replacing lost warrants

have been considered by former Attorneys General. When the county auditor's warrant to a village treasurer was lost before delivery, it was held in Opinion 286, Opinions of Attorney General, 1915, Vol. I, p. 552, that it was the duty of the auditor to replace such warrant, the syllabus reading:

"When a warrant for taxes due a village is mailed to the treasurer of the village by the county auditor and is lost in the mails, it is the duty of the auditor upon proper application therefor, to issue and deliver to such treasurer a duplicate warrant."

Similarly it was held in Opinions, Attorney General, 1929, p. 773, that it was the duty of the auditor of state to replace a warrant lost before delivery, the syllabus reading:

"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."

While contrary conclusions might appear to have been reached in the 1922 Opinions, Attorney General, p. 481, and in 1937 Opinions, Attorney General, p. 373, and also in the case of *State ex rel Creager v. Billig*, Auditor, 104 O. S. 380, a careful examination will disclose that in each instance therein considered the warrant had been issued by delivery to the payee or proper persons and thereafter lost or endorsed without proper authority. Upon the facts presented in your inquiry, it is clear that the warrant for the Laurel Township trustees was never issued. The fact that there is no express statutory authority for the county auditor to issue and deliver a duplicate warrant is of little importance. The controlling fact is that the auditor remains under obligation to issue such warrant until delivery has finally been made.

In specific answer to your inquiry, it is my opinion that where funds appropriated under authority of Section 5541-8 of the General Code are due to township trustees from the county, it is the duty of the county auditor to draw and issue a warrant therefor. A warrant is not issued until delivered

to the payee or a person or agent entitled to receive it, and if lost before such delivery it is the duty of the auditor to issue a duplicate warrant.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.