

Opinion No. 56-6450

May 28, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

You have related the following situation:

"A warrant was issued by the Reserve Union High School to the U.S. Treasury Department, Internal Revenue Service, in payment of withheld federal income taxes. This warrant was lost by the depository bank, and they are now requesting that a duplicate warrant be issued. The New Mexico Statutes require that the party requesting the duplicate warrant execute an indemnifying bond prior to issuance of a duplicate warrant."

Your questions arising out of the above are:

"1. Is the Federal Government subject to the indemnifying bond requirement of the New Mexico Statutes?

"2. If the Federal Government is exempt from the indemnifying bond, would the bank also be exempt as an agent of the Federal Government?"

Sections 11-2-45 and 11-2-46, N.M.S.A., 1953 Compilation, provide respectively:

"In case of the loss or destruction of any warrant, draft, check, or order for the payment of money out of the treasury of the state, or of any county, drawn by any officer authorized by law to draw the same, the officer who drew the same, or his successors in office, may, and he or they are hereby authorized, to draw in favor of the party to whom such warrant, draft, check, or order was issued, a duplicate of the same, as provided in the succeeding section."

"Before any duplicate shall be issued as provided in the foregoing section, the party applying for the same shall prove to the satisfaction of the officer authorized to draw such duplicate, that the original warrant, draft, check, or order, has been lost or destroyed, and shall file with such officer a bond to his satisfaction, to the state or county, as the case may be, in a penalty sufficient to cover the amount of such original warrant, draft, check, or order; and all costs and expenses that may accrue by reason of the premises, conditioned to reimburse and save harmless the state or county from all loss in consequence of the loss of such warrant, draft, check, or order, and the issuing of such duplicate."

In the absence of specific mention of either the State or Federal governments in statutes it is generally held that the application does not extend to them.

"The government, whether federal or state, and its agencies are not ordinarily to be considered as within the purview of a statute, however general and comprehensive the language of the act may be, unless intention to include them is clearly manifest, as where they are expressly named therein, or included by necessary implication." 82 C. J.S., page 554, "Statutes" Section 317.

We find nothing in the statutes above which indicates an intention to include the Federal government within their purview. Requirement of a bond from the United States Government in these circumstances directly affects the relationship between this State and the Federal government. In this area general policy dictates that all possible should be done to avert the placing of burdens by one upon the other.

These considerations, and the general rule on statutory construction cited above, lead us to the conclusion that the United States Government does not come within the meaning of Sections 11-2-45 and 11-2-46.

Where a state or county warrant is issued in payment of a debt and that warrant is lost it seems to us that the county or state is under some form of duty to pay the debt. As concerns parties other than the United States or State governments, that duty is impliedly recognized in the two statutes above and the manner for discharging it is thus regulated.

From the foregoing we conclude a negative answer to your first question.

Regarding your second question, it seems to us that application of the statutes above extends to parties and their agents, and if the application of these statutes does not extend to the Federal Government, it follows that the agents of the Federal Government are also exempt. Without examining the relationship between the bank and the Federal government, I assume, for purpose of this opinion, that that relationship is as you state it. Your second question is therefore answered in the affirmative.

By: Santiago E. Campos

Assistant Attorney General