

## **Opinion No. 62-139**

November 6, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

**TO:** Mr. Glenn Neumeyer, Assistant District Attorney, Third Judicial District, Las Cruces, New Mexico

### **QUESTION**

#### QUESTION

What procedure should be followed by the county treasurer in paying upon a bond coupon to a holder of a negotiable county bond where the coupon has become lost by the owner, and such coupon is now due and payable?

#### CONCLUSION

See Analysis.

### **OPINION**

#### ANALYSIS

The authority of a county to issue duplicate county warrants, drafts, checks or orders for the payment of money out of public funds, where such are lost or stolen, is set out under Section 11-2-45, N.M.S.A., 1953 Compilation. Although our research does not indicate any other statute specifically pertaining to county bonds or coupons, it is our opinion that the procedure set out under the provisions of Section 11-2-45 supra, should be followed in issuing duplicate coupons to county bonds and in making payment thereon.

Section 11-2-46, N.M.S.A., 1953 Compilation, specifies that before any duplicate warrant, draft, check, or order for the payment of money out of county funds shall be issued, the party applying for the same shall (1) prove to the satisfaction of the officer authorized to draw such duplicate that the original was lost or destroyed, (2) file with such officer a bond to his satisfaction payable to the county in a penalty sufficient to cover the amount of such bond or coupon, and pay all costs and expenses that may accrue by reason of the issuance of such duplicate, conditioned to reimburse and save harmless the county from all loss in consequence of the loss of such bond or coupon.

It is generally recognized that when bonds are lost, stolen or destroyed the owner may apply to the issuing authority for duplicates if he puts up surety and complies with

certain procedural requisites. The rule is stated in Quindry, "Bonds and Bondholders," Vol. 1, Section 521 at page 732, that:

"When . . . bonds are lost, mutilated or destroyed, the owner has a right to have duplicates issued. He must file an affidavit of facts establishing the loss, mutilation or destruction and post good and sufficient indemnifying bond, as well as pay the expense of issuing the duplicate. \* \* \*

"The giving of an indemnity bond as a basis of obtaining a duplicate is simply a means of making the issuer reasonably safe . . . If, the payee, in collecting on such a bond, gives indemnification as security against subsequent collection, he is entitled to a release from his indemnity obligation after the expiration of the limitation period on the bond."

Under the Uniform Commercial Code, Section 50A-8-301 and 50A-8-302, N.M.S.A., 1953 Compilation, it is recognized that a person may become the lawful holder of a negotiable bond or bond coupon where he is a "bona fide purchaser," as defined under the statute, and be entitled to collection upon a negotiable bond or coupon, even though the bond was stolen or lost.

Statutory authority exists under Section 4 - 4 - 20, N.M.S.A., 1953 Compilation, whereby a bondholder may safeguard against loss of bonds or bond coupons by application to the county treasurer for registration of such securities in his name.

As prescribed above, the owner of a negotiable bond or coupon is generally entitled to the issuance of a duplicate thereof, where he has satisfactorily shown by affidavit to the county issuing authority that such negotiable security has been in fact lost, mutilated, or destroyed. The claimant should pay the reasonable expense of issuing the duplicate to the county. In addition, such claimant must prepare and file a bond, made payable to the issuer of such bond in an amount sufficient to cover the amount of such bond or coupon and to pay all costs and expenses that may result from the reissuance of such duplicate security, to save the county harmless from any demand made against the county by a "bona fide" holder of such security for payment.