

## Opinion No. 66-10

January 19, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** Mr. Robert E. Kirkpatrick, Chief, Financial Control Division, State Capitol Building, Santa Fe, New Mexico

### QUESTION

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May a duplicate warrant be issued in favor of the last holder of the warrant, upon his filing of a bond, when the person to whom the original warrant was issued cannot be located to endorse the duplicate warrant?

#### CONCLUSION

No.

### OPINION

#### {\*12} ANALYSIS

Prior to the 1965 Session of the New Mexico Legislature, Sections 11-2-45 and 11-2-46, N.M.S.A., 1953 Compilation, provided as follows:

"Loss or destruction of state or county warrant or order for money -- Issuance of duplicate. -- In case of the loss or destruction of any warrant, draft, checks, or order for the payment of money {\*13} 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."

"11-2-46. Issuance of duplicate -- Bond to save state or county harmless. -- 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."

The statutory language is plain and explicit. The officer is authorized to draw a duplicate of the warrant, **in favor of the party to whom such warrant was issued**. No exception is provided herein.

It should also be noted that the subtitle to Sections 11-2-45 and 11-2-46, N.M.S.A., 1953 Compilation, include the following language, "Issuance of duplicate". If this language is to be given its most common and normal meaning then the second warrant to be issued must be the same as that originally issued.

Sections 11-2-45 and 11-2-46, N.M.S.A., 1953 Compilation, as amended by the 1965 Legislature, now provide:

"11-2-45. Loss or destruction of state or political subdivision warrant or order for money -- Issuance of duplicate. -- 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 political subdivision of the state, the officer who drew the original instrument, or his successors in office, shall issue a duplicate as provided in section 11-2-46 New Mexico Statutes Annotated, 1953 Compilation."

"11-2-46. Issuance of duplicate -- Bond to save state or political subdivision harmless. -- Before any duplicate is issued as provided in section 11-2-45, New Mexico Statutes Annotated, 1953 Compilation the party applying for the duplicate shall file with the officer a bond payable to the state or political subdivision, as the case may be, in a penalty in the amount of the original warrant, draft, check or order conditioned to save harmless the state or political subdivision from all loss in consequence of the loss or destruction of the original warrant, draft, check, or order, and the issuing of the duplicate, if the loss to the state or political subdivision is a result of the fraud or negligence of the original payee or a holder in due course. If the bond is a personal surety bond, it shall be sufficient if;

A. There is one (1) surety for each bond for one hundred dollars (\$ 100) and under, and there are two (2) sureties for each bond over one hundred dollars (\$ 100); no surety for any of these bonds may be proprietor as surety for his proprietorship or partner as surety for his partnership as principal; and

B. Each surety swears in writing that he owns real property in New Mexico having a net value equal to the amount of the bond, and that this net value is not exempt from execution and forced sale over and above all his just debts and liabilities."

While the language contained in these sections has been changed, reference is still made to the issuance of **duplicates** and we are of the opinion no change has been made affecting {<sup>\*14</sup>} the nature of duplicate warrants and that therefore the warrants must be issued in the name of the original payee.

We trust that this fully answers your question.