

Opinion No. 68-39

April 15, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Herbert H. Hughes, Chief Budget-Finance Control Division Department of Finance & Administration State Capitol Santa Fe, New Mexico

QUESTIONS

Before a duplicate warrant is issued by the State or a political subdivision of this State, must the party applying for the duplicate warrant file a bond?

CONCLUSION

Yes.

OPINION

{*70} ANALYSIS

In the case of loss or destruction {*71} of any warrant draft, check or order, Section 11-2-45, N.M.S.A., 1953 Compilation authorizes the issuance of a duplicate by the State or its political subdivisions if the conditions of Section 11-2-46, N.M.S.A., 1953 Compilation are met, Section 11-2-46, supra, provides as follows:

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 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 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. (Emphasis added).

The word "shall" is usually interpreted as being mandatory. See **In re Armijo's Will**, 57 N.M. 649, 660, 261 P.2d 833 (1953). It is therefore the opinion of this office that before a duplicate warrant, draft, check or order is issued by the State or a political subdivision thereof, the party applying for the duplicate must file a bond meeting the requirements of Section 11-2-46, supra. The duplicate must be in favor of the original payee of the warrant. See Attorney General Opinion No. 66-10.

By: Gary O'Dowd

Assistant Attorney General