

## Opinion No. 18-2122

August 21, 1918

**BY:** HARRY L. PATTON, Attorney General

**TO:** Hon. H. L. Hall, State Treasurer, Santa Fe, New Mexico.

State Treasurer Must Burn Cancelled Warrants and Has No Discretion to Do Otherwise.

### OPINION

This acknowledges receipt of your letter of yesterday's date making inquiry concerning the recent opinion by this office relative to the destruction of cancelled warrants of the state. The opinion referred to construed Section 5328, Codification 1915, and was addressed to Hon. W. E. Lindsay, Governor. The section referred to reads as follows:

"Between the first and fifteenth of December each year it shall be the duty of the treasurer to present to the governor and State Auditor all warrants, coupons and evidences of indebtedness paid by him since the preceding presentation thereof. He shall make out three complete lists thereof showing the date, amount and number thereof, to whom payable and by whom paid. One of said lists shall be filed with the Secretary of State, one with the auditor and one with the treasurer, and shall be verified and certified by the governor and state auditor and when so certified shall be received as evidence of their contents. The said warrants and other instruments shall be burned in the presence of the governor, treasurer and auditor."

In the opinion referred to this office held that the language of our statute is mandatory and that that it was the intention of the legislature that these warrants, coupons and other evidences of indebtedness be burned.

In your letter you say that this would be very poor business policy and that you have endeavored to conduct the affairs of your office the same as you would your own private business affairs. You further state that in more than one instance in your business career it has been necessary for you to produce old cancelled checks and drafts to avoid double payment and other serious consequences. You again, by a statement in your letter, assume a state of facts as follows:

"Let us assume for the sake of argument, that some person comes into the office a year or so hence and says he never received his warrant and we show him a typewritten copy of a list of cancelled warrants, certified to as having been destroyed and he says that he can prove that he never received the said warrant. Now if we could show him his endorsement thereon and the endorsement of the bank which cashed it, would it not have been to our advantage to have kept same?"

I realize, as you say, that during your term there has been considerable checking over of old records in your office, and I know you would not like to have it said, as you state, that everything in black and white which passed through your hands as Treasurer was not left open to scrutiny and inspection.

I agree with you in all that you have said as to this being a poor business policy, and know that it is your ambition to conduct the affairs of your office properly and to leave a clean record behind you which would bear scrutiny and inspection. Notwithstanding this, the legislature of this State entertains a contrary view. The legislature, instead of providing for the preservation of records, has not only sanctioned the destruction of these warrants, but has made it mandatory that you burn the records referred to regardless of your desire to preserve these warrants in your files. In other words, our legislature has committed itself to a policy of destroying records, rather than preserving same. I suggest that you follow the mandatory provisions of our statutes and burn them.