

Opinion No. 18-2115

August 15, 1918

BY: C. A. HATCH, Assistant Attorney General

TO: Hon. W. E. Lindsey, Governor, Santa Fe, New Mexico.

State Treasurer Must Burn Old Warrants In Accordance With Section 5328, Laws of 1915.

OPINION

Sir:

We have your favor of recent date referring to the matter of construing Section 5328, New Mexico Statutes, 1915, relative to whether or not the language of said statute declaring that all warrants and other instruments shall be burned in the presence of the Governor, Treasurer and Auditor is mandatory, or whether under the language of such statute such warrants and other instruments can be properly cancelled and retained in the Treasurer's office.

The Section you inquire about is as follows:

"5328. Destruction of paid warrants, coupons, etc.

"Section 14. 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."

You will observe the lists required to be made out and certified by the Governor and Auditor contain complete statements showing the date, amount, and number of warrants coupons and evidence of indebtedness paid by the Treasurer, and to whom payable, that these lists when verified certified by the Governor shall be received as evidence of their contents. It seems to us by making this provision regarding receiving of such lists as evidence, the legislature evidenced its intention to make these lists take the place of the warrants and other certificates of indebtedness which had been paid by the Treasurer. This being true, it then becomes evident that when the Legislature said the warrants should be burned, they used this language in its mandatory sense, and intended to require that these warrants, coupons, and other evidence of indebtedness

be burned. Therefore, we take it, the law admits of no discretion, and they should be burned.

I might advise that the authority of the present Governor, Auditor and Treasurer extends only to the burning of the warrants included in the lists submitted by the present Treasurer. If there are at this time in the office of the Treasurer warrants paid by past administrations, there is no authority in the present officials to burn them.