

## Opinion No. 35-1067

June 19, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. A. R. Martinez, Treasurer, San Miguel County, Las Vegas, New Mexico.

{\*70} You requested me today by telephone to give you an opinion with regard to the following facts: L. C. Ilfeld of Las Vegas was the holder of two \$ 100.00 county bonds. The bonds were called by the county several years ago and Mr. Ilfeld delivered his two certificates to the then County Treasurer of San Miguel County and received a receipt for the said certificates. The bonds were never paid and the certificates have in some manner been lost in the County Treasurer's office. The county has in its sinking fund money with which to retire the two bonds in question. You wish to know what procedure you should follow in these circumstances.

We have no statutory provision covering the procedure to be followed with respect to bond holders losing or misplacing the certificates and therefore must rely upon the general law to govern the situation. Quindry on Bond and Bondholders, Section 521, lays down the general rule as follows:

"When municipal or other 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 {\*71} bond as well as pay the expense of issuing the duplicates.

The giving of an indemnity bond as a basis of obtaining a duplicate is simply a means of making the insurer reasonably safe. Therefore, when a bond is lost, stolen, mutilated or destroyed after maturity so that there can be no bonafide holder, it may in some cases appear clear to the court that no indemnity is necessary to the defendants safety. If the payee in collecting on such a bond gives an 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."

From the foregoing it is our opinion that since the bond in question has already been called for payment it can serve no purpose to have a duplicate bond issued but in place thereof the money may be paid by you to Mr. Ilfeld upon his having made and filed with you a complete affidavit setting forth all of the circumstances in connection with the transaction and also filing with you an indemnity bond conditioned upon him and his sureties, holding the County of San Miguel harmless from any damage or liability accruing on account of a possible future demand and payment to the holder of such bonds should this case arise.

I am assuming in the above holding that you have positively satisfied yourself that the bonds in question have not already been paid to any person whatsoever.

By: J. R. MODRALL,

Asst. Atty. General