

FUND COMMISSION:
BONDS:

Type of application required and powers and duties of Board of Fund Commissioners in replacing or paying lost bond or coupons of the State.

December 30, 1942

Honorable Forrest Smith
Secretary
State Board of Fund Commissioners
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of November 13, 1942, as follows:

"The State Board of Fund Commissioners respectfully request your legal opinion construing the intent of Sections 13075 Article 1 and 13112 Article 5, Chapter 87 Revised Statutes of Missouri, 1939.

"The specific question confronting the Board of Fund Commissioners is based upon the following statement of facts, to-wit:

"Mrs. M. R. Cummings of the City of St. Louis, Missouri, is the legal holder and owner of twelve (12) coupon State of Missouri Road Bonds Series "P" aggregating \$12,000. The coupons due February 1, 1942 were detached from said bonds and have now become lost, stolen or destroyed before payment and the said Mrs. M. R. Cummings now requests the State Board of Fund Commissioners to accept her personal bond or indemnity to adequately protect the State of Missouri against any losses, costs or damages which the State of Missouri may sustain or incur by making a payment of these various coupons without the physical delivery of the coupons to the fiscal agent of the State of Missouri for payment.

"The Board of Fund Commissioners would like to be advised whether or not the owner of the lost coupons above referred to must furnish the Board

proof of publication together with her application, affidavit and bond relating to the lost, stolen or destroyed coupons under the provisions of Section 13075 Article 1 R. S. Mo. 1939, or whether or not the Board of Fund Commissioners may authorize and order the payment of said lost, stolen or destroyed coupons upon the legal holder or owner filing an application, affidavit and bond as provided in said Section 13112 Revised Statutes of Missouri 1939."

As we view this question, the pertinent statutes are as follows: Section 13075 R. S. Mo. 1939, providing:

"Whenever any state bond or bonds or coupon or coupons shall be lost, stolen or destroyed, the owner or owners thereof may make application for a renewal thereof, under the provisions of articles 1 and 2 of this chapter. Such application shall be verified by affidavit stating the fact of such loss, and the cause and circumstances of the same, how, when and where such loss occurred. Said application shall also be accompanied by proof of publication for four weeks successively, in some newspaper published in the city of New York, and one published in the city of St. Louis, that certain bonds or coupons of the state of Missouri, describing them by date, amount, number and object of their issue, have been lost, stolen or destroyed, and that application will be made to the state auditor, on a day therein specified, for the issue of duplicates of the same, under the provisions of articles 1 and 2 of this chapter."

Section 13076 R. S. Mo. 1939, providing:

"The said application shall also be accompanied by a bond, to be given by such owner or owners, on unencumbered real estate within this state, or bonds of the United States or of the state of Missouri, in double the amount of the principal and unpaid interest of said bond or bonds at the time of application, conditioned to save the state harmless from all damages or loss by reason of such issue of duplicates or warrants, which said bond shall be approved by the governor, and shall be filed in the office of the state auditor; and suit may be brought upon said bond in behalf of the state at any time within ten years after the original bond or coupons shall be presented to the state treasurer or state auditor or any fiscal agent of this state for payment. If, thereupon the governor is satisfied that said bonds or coupons have been destroyed or lost or stolen, then and in that case he shall order duplicate bonds or coupons, of like number, date and amount of the original bonds or coupons, to be issued; or they may, in their discretion, order a warrant for the amount of such bonds and coupons to be drawn on the sinking fund for the payment of the same. When bonds are issued, semi-annual coupons shall be attached thereto in the same number as on the original bonds at the time of their loss, destruction or theft."

Section 13112, R. S. Mo. 1939, providing:

"Whenever application is made for reissue of lost bonds or coupons, and proper bond has been given by the applicant and approved by the governor, as required by section 13075, R. S. 1939,

the board of fund commissioners shall examine the matter, and if they are satisfied that said bonds or coupons have been destroyed, lost or stolen, then they shall order duplicate bonds or coupons of like numbers, date and amount of the original bonds or coupons to be issued, or they may, in their discretion, order a warrant for the amount of such bonds or coupons to be drawn on the appropriation made by the general assembly for state sinking fund or state interest fund, for the payment of the same."

We think the solution to this question is simple if the background of the statutes is understood. Sections 13075 and 13076 R. S. Mo. 1939 have their origin in the General Statutes of 1865, page 93, where the substance of both was contained in Section 70. Certain amendments thereafter were made and adopted at the 1879 revision session and the substance of said section 70 emerged as Sections 7619 and 7620 R. S. Mo. 1879. No changes thereafter appear until the 1909 revision session where the words "of articles 1 and 2" were added as they now appear in Section 13075 R. S. Mo. 1939. These words and figures were added by the revision commission, and were not added to said section by any act adopted by the General Assembly. A revision commission has no legislative powers (Ex Parte Hutchens 296 Mo. 331, 335) hence the addition of these words and figures is ineffective for any purpose and they may be disregarded. Also the reference to Article 2 is clearly erroneous. In R. S. Mo. 1909, Article 2 of this Chapter pertained to "Depositories of State Moneys" as it now does, and nothing therein, then or now, refers to lost bonds or coupons. The reference as added in 1909 by the revision commission should have been to article 5 which in 1909 and at present does contain provisions relating to lost bonds and coupons.

Section 13112 R. S. Mo. 1939 stems from an Act in Laws 1891, page 16, Section 4. It has come down to date without change. Section 18 of this act was a provision repealing all acts

or parts of act in conflict with the provisions of the new act. It appears that Section 13112 R. S. Mo. 1939, by providing that the Board of Fund Commissioners should examine the facts and replace or pay off lost bonds or coupons, causes a conflict to exist between these provisions and the same provisions of Sections 13075 and 13076 R. S. Mo. 1939, wherein the Governor is alone given those duties and powers. Therefore, under Section 18, Laws of Mo. 1891, page 16, Sections 13075 and 13076, in so far as their provisions conflict with Section 13112, have been repealed. However, due to the reference to Section 13075 R. S. Mo. 1939, made in Section 13112 R. S. Mo. 1939, it is clear that the General Assembly intended that Sections 13075 and 13076 R. S. Mo. 1939, still to be effective for all purposes except that part thereof which vests the Governor with the sole power to examine the facts and order lost bonds or coupons replaced or paid.

Under the above three statutes, in our opinion, the following is necessary for the replacement or payment of a lost bond or coupon. The owner of the bond or coupon should make written application to the State Auditor stating the fact of a loss, the cause and circumstances and how, when and where such loss occurred. The application must be verified by affidavit and shall be accompanied by proof of publication for four successive weeks in some newspaper published in New York City and one newspaper published in the City of St. Louis. The publication notice shall state that certain bonds or coupons of the State of Missouri have been lost, describing them by date, amount, number and object of their issue and that on a day certain application will be made to the State Auditor for the issuance of duplicates of the lost bonds or coupons. The application must also be accompanied by a bond given by the owner of the lost bonds or coupons, on unencumbered real estate within this state or on bonds of the United States or of the State of Missouri, in double the amount of the lost bonds or coupons that are to be replaced, conditioned to save the state harmless from all loss that may be occasioned by reason of the replacement or payment of the lost bonds or coupons. This bond is to be approved by the Governor and filed with the State Auditor. Upon this application the Fund Commissioners are to act and said body may either

Hon. Forrest Smith

-6-

December 30, 1942

cause duplicates of the lost bonds or coupons to be issued or they may pay off the lost bond or coupon by causing a warrant to be drawn in payment of the same.

CONCLUSION.

It is, therefore, our opinion that Sections 13075 and 13076 R. S. Mo. 1939, govern the form of application for replacement or payment of lost bonds or coupons and must be complied with; that Section 13112 R. S. Mo. 1939, vests the Board of Fund Commissioners with the sole authority, after the statutory application has been filed, to determine whether said lost bonds or coupons will be replaced or paid.

Respectfully submitted

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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