

STATE TREASURER--AUTHORITY AS
TO OUTSTANDING CHECKS.

Where State Treasurer
issued a check as provided
by statutes and the same
is lost, he may require
bond before issuing dupli-
cate check--Commissioners
of the Department of Penal
Institution shall have power
to execute such bond.

January 12, 1944



Mr. K. Autenrieth
Credit and Office Manager
Commissioner of Industries
Jefferson City, Mo.

Dear Sir:

We have your request of December 28, 1943, which
is as follows:

"On May 22, 1943, the State Treasurer
issued check #631288, \$246.00, to the
Parker Boot & Shoe Mfg. Company (State
Owned).

"This was in payment of invoice issued
to State Hospital #2 at St. Joseph,
Missouri. The check was never received
by the Department of Penal Institutions
and the State Treasurer has advised that
before a duplicate check can be issued
it will be necessary that a Bond be exe-
cuted for double the amount of the check,
or, \$492.00.

"Payment was ordered stopped on the out-
standing check and of course if it shows
up payment will be withheld.

"What we would like to know is...who is
authorized to sign bond, or, if it is
necessary for Bond to be issued, as this
is a transaction of one state institu-
tion to another."

For the purpose of this opinion, we shall answer
your two questions in reverse order. The first ques-
tion is whether or not it is necessary for a bond to
be executed in this instance, inasmuch as "this is
a transaction of one state institution to another."
Section 13012 R. S. Mo. 1939, provides that the
Treasurer shall provide a bond, in the following lan-
guage:

"Immediately after his election or appointment, the state treasurer shall execute and deliver to the governor a bond to the state in the sum of five hundred thousand dollars, with not less than ten sureties, to be approved by the governor, conditioned for the faithful performance of all the duties required or which may be required of him by law, whether as state treasurer, or in any capacity in which he may be required to act ex officio by virtue of being state treasurer, and for the safety of the state funds and securities in his custody or under his control; which bond shall be renewed every two years, and as much oftener as the governor may require and the safety of the public moneys and securities demand.* * * "

Among the duties incumbent upon the Treasurer to perform, by the statutes is included, Section 13054, R. S. Mo. 1939, which reads as follows:

"Whenever a warrant shall be presented to the treasurer it shall be his duty to pay the same in lawful money, or by giving a check on some depository of state funds, attesting the same by affixing his seal of office to said check; Provided, said warrant is properly drawn against a legal appropriation, and does not exceed the amount thereof; and no money shall be drawn from a depository of state funds in any other manner. (R. S. 1929, Sec. 11429.)"

From the foregoing it is easily seen that it is the duty of the Treasurer to safely keep the moneys of the State, and to perform all duties of his office. No where in the statutes is there any provision for the State Treasurer to "cancel a check" once it has been duly issued, as provided by law, nor is there any provision for the State Treasurer to issue duplicate checks in the event a check is lost. It is true that Section 13079 R. S. Mo. 1939, which pertains to the Auditor, provides that in the event a warrant is lost, and is not paid by the State Treasurer, the person to whom the warrant is issued

may apply for a duplicate warrant, whereupon the Auditor may require a bond in double the amount of the warrant, and then issue a duplicate warrant. This section does not apply to the State Treasurer.

Therefore, it is apparent that this does not become a "transaction between two state institutions." The Treasurer, being under bond, to safely keep the moneys and faithfully perform the duties of his office, could issue a duplicate check, but if he did, he would do so at his own personal risk, under his bond, in the absence of any statutory authority to so do. Therefore, he could, if he desires to take the risk involved, have the right to demand whatever bond necessary to protect him from personal liability. It then becomes a transaction between an individual, i.e. the State Treasurer, and whoever applies for the duplicate check.

The second question is "who is authorized to sign bonds?" Section 8980 R. S. Mo. 1939, sets out the duties of the commissioners and makes them responsible for the efficient operation of the Penal Institutions.

Section 8985, R. S. Mo. 1939, in setting out the power of the commissioners, states in part as follows:

"* * * and shall be vested with and possessed of all other powers and duties necessary and proper to enable it to carry out fully and effectually all the purposes of this article.* * *"

From the foregoing it may be seen that if anyone has power to sign this bond, the Commissioners of the Department of Penal Institutions would be the proper party.

C O N C L U S I O N

It is therefore, the opinion of this office that the State Treasurer may issue a duplicate check at

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his own risk; and if he so desires, may require bond. It is our further opinion that if the Commissioner of Penal Institutions desires a duplicate check issued, and the Treasurer requires a bond, the Commissioner of Penal Institutions would be the proper party to sign the bond.

Respectfully submitted,

GAYLORD WILKINS
Assistant Attorney General

GW:DC

APPROVED:

ROY MCKITTERICK
Attorney-General