

# Calendar No. 634

69TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
No. 622 }

## STATE OF OHIO

APRIL 19, 1926.—Ordered to be printed

Mr. TYSON, from the Committee on Claims, submitted the following

### REPORT

[To accompany S. 2741]

The Committee on Claims, to whom was referred the bill (S. 2741) for the relief of the State of Ohio, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

On October 1, 1923, the disbursing clerk, Department of Agriculture, drew check No. 966745 for \$29,812.78 in favor of the State treasurer of Ohio, this amount being a payment for certain Federal-aid road funds that were due the State of Ohio.

The check was lost in transit in the mails, and the Treasurer of the United States stopped payment on same.

According to the decision of the Comptroller of the Treasury under date of April 30, 1921, copy of which appears in the record, the disbursing officer or agent of the United States is authorized to issue a duplicate check under the present circumstances, provided that proper indemnity bond be executed to protect the United States against payment of both the original and duplicate check.

The Secretary of Agriculture or his department has no authority to issue duplicate check without this bond, and the attorney general of Ohio holds that there is no authority vested in any official of that State to execute such bond as required, and this bill is for the purpose of authorizing the disbursing clerk of the Department of Agriculture to issue such check without the requirement of the indicated bond.

The Department of the Treasury interposes no objection to the passage of the bill.

The facts are fully set forth in the following correspondence from the Secretary of the Treasury, which is appended hereto and made a part of this report:

TREASURY DEPARTMENT,  
Washington, February 11, 1926.

Hon. RICE W. MEANS,  
*Chairman Committee on Claims,  
United States Senate.*

MY DEAR SENATOR: I have the honor to acknowledge the receipt of your letter of February 9, 1926, inclosing copy of S. 2741, being a bill for the relief of the State of Ohio, authorizing and directing the disbursing clerk of the Department of Agriculture to issue, without the requirement of a bond of indemnity, a duplicate of check No. 966745, drawn October 1, 1923, in favor of "State treasurer of Ohio," for \$29,812.78, and requesting an opinion as to its merits.

In reply, I have to state that the check, which was issued on account of Ohio Federal-aid project No. 238, is reported to have been lost, stolen, or miscarried in the mails, and has not been paid by the Treasurer of the United States, on whom it was drawn. In view of the provisions of section 3646, Revised Statutes of the United States, as amended, this department has been without authority to approve the issuance of a duplicate check without a bond of indemnity, and it appears from inclosed copy of letter of Mr. H. J. Moriarty, auditor, department of highways and public works, State of Ohio, that no official of that State has authority to execute such a bond.

Under the circumstances, this department interposes no objection to the passage of the bill.

Copies of all correspondence relating to the matter, on file in this office, are inclosed.

Very truly yours,

A. W. MELLON, *Secretary of the Treasury.*

APRIL 30, 1921

THE SECRETARY OF THE TREASURY.

SIR: By your reference of the 22d instant, decision is requested as to whether the city of Sumter, S. C., should be required to furnish a bond of indemnity to secure the issuance of a duplicate of the check drawn by J. L. Summers, disbursing clerk, Treasury Department, December 23, 1920, for \$43.90 in favor of the city of Sumter for lights for the month of November, 1920, which is alleged not to have been received by the payee but was lost in the mails.

It appears that a bond of indemnity for the issuance of a duplicate check was forwarded for execution by the proper officer of the city of Sumter, but execution has thus far been refused, and the threat has been made by the mayor that if the particular account remains unpaid after the expiration of a reasonable time from date of letter advising of refusal to execute the bond the lighting service of the post office at Sumter will be discontinued.

The giving of bond of indemnity as a condition precedent to the issuance of a duplicate check, upon proof of loss of the original, is required by section 3646, Revised Statutes, as amended and reenacted by acts of February 23, 1909 (35 Stat. 643), and March 21, 1916 (39 Stat. 37), which provides that—

"Whenever any original check is lost, stolen, or destroyed disbursing officers and agents of the United States are authorized, within three years from the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of original check, as the Secretary of the Treasury shall prescribe."

This statute makes the execution and furnishing of a bond of indemnity a prerequisite to the issuance of a duplicate of a lost check. The law makes no exception in the case of a municipality. The requirements apply there the same as in the case of an individual or other corporate body. The statute confers no authority upon the Secretary of the Treasury to dispense with a bond. He may prescribe the penalty of the bond, how and in what manner the bond should be executed, who may be accepted as sureties, and fix by regulations other conditions of execution, but he may not, under the law, dispense with the requirement of a bond of indemnity altogether. If Congress had wished to give authority to dispense with the requirement of a bond of indemnity in the case

of a municipality or other corporate body of like character an exception could readily have been written into the statute. See in this connection 13 Comp. Dec., 728.

I apprehend that if the matter is more fully explained to the mayor of the city of Sumter and it is pointed out to him that the furnishing of a bond is a requirement of law as distinguished from a mere departmental regulation, and that enforcement of the penalty will never be made unless the original check is received and wrongfully cashed, which is not likely to be the case, he will probably be willing to execute a paper which will answer the requirement of the law.

Respectfully,

W. W. WARWICK,  
*Comptroller of the Treasury.*

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TREASURY DEPARTMENT,  
*Washington, December 24, 1925.*

Mr. H. J. MORIARTY,  
*Auditor Department of Highways and Public Works,  
State of Ohio, Columbus, Ohio.*

SIR: Mr. A. Zappone, disbursing clerk, Department of Agriculture, has referred to this office your letter of December 5, 1925, addressed to Mr. T. Warren Allen, chief division of control, Bureau of Public Roads, Department of Agriculture, stating that your office is handicapped in its operation by its failure to receive check No. 966745, drawn October 1, 1923, by A. Zappone, disbursing clerk, in favor of "State treasurer of Ohio," for \$29,812.78, and that the attorney general of Ohio has ruled that no officer of the State is empowered to execute a bond of indemnity to secure the issuance of a duplicate check.

In reply I have to invite your attention to section 3646, Revised Statutes of the United States, as amended, printed on the inclosed blank bond of indemnity, which provides that—

"Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, within three years of the date of such check, to issue a duplicate check, under such regulations in regard to its issue and payment, and upon the execution of such bond, with sureties, to indemnify the United States, and proof of loss of the original check, as the Secretary of the Treasury shall prescribe."

As the requirement of a bond, with sureties, is one of law, this department is without discretion in the matter.

For your further information I inclose copy of a decision of the Comptroller of the Treasury, dated April 30, 1921, involving issuance of a duplicate check in favor of the city of Sumter, S. C.

By direction of the Secretary.

Respectfully,

C. S. DEWEY,  
*Assistant Secretary of the Treasury.*

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DEPARTMENT OF AGRICULTURE,  
DIVISION OF ACCOUNTS AND DISBURSEMENTS,  
*Washington, D. C., December 17, 1925.*

THE SECRETARY OF THE TREASURY  
(Division of Bookkeeping and Warrants).

SIR: I inclose a letter, dated December 5, 1925, from Mr. H. J. Moriarty, auditor, department of highways and public works, Columbus, Ohio, regarding his inability to furnish a bond of indemnity in connection with lost check No. 966745 (symbol 70001), dated October 1, 1923, drawn to the order of "State treasurer of Ohio," amounting to \$29,812.78, in payment of voucher 53799. You will note his statement to the effect that the attorney general of Ohio has ruled that no officer of that State has any power in executing the bond of indemnity. Under the provisions of section 3646 of the Revised Statutes as amended, I am powerless to issue a duplicate check until a bond of indemnity has been furnished.

Payment has been stopped on this check by the Treasurer of the United States. Accordingly, I would request that you advise Mr. Moriarty what action will have to be taken to secure the proceeds of the check. A copy of this letter is being sent to Mr. Moriarty.

Very respectfully,

A. ZAPPONE, *Disbursing Clerk.*

## STATE OF OHIO

DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS,  
Columbus, Ohio, December 5, 1925.

Mr. T. WARREN ALLEN,  
Chief Division of Control, United States Department of Agriculture,  
Bureau of Public Roads, Washington, D. C.

DEAR SIR: Referring to past correspondence in regard to duplicate warrant in the amount of \$29,812.78, due this department on Ohio Federal aid project No. 238, I wish to advise that our attorney general has ruled that no officer of the State has any power in executing blank bond mailed to the State treasurer of Ohio by your department for execution on October 26, 1925.

I am therefore requesting that this provision be waived and that an affidavit be signed by the State treasurer of Ohio to the effect that the original warrant was never received, as this department is being handicapped in its operation due to the failure to receive this money from the Federal Government. Kindly advise me what action you take in this matter.

Yours very truly,

H. J. MORIARTY, Auditor.

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