

Dear Mr. Brown:

You have submitted the following:

"Where county issues warrant in payment of claim by banking department to state treasurer and warrant lost, may county insist on bond before issuing a duplicate?"

Under the provisions of Section 4628, Revised Codes of Montana, 1935, the board of county commissioners is authorized, upon satisfactory proof that any original bond, warrant, or coupon has been lost or destroyed, to issue to the owner or holder of such bond, warrant, or coupon, a duplicate thereof, which will take the place in order of registration and payment of such original bond, warrant, or coupon, and in all cases supersede and take the place of such original.

Section 4627, Revised Codes of Montana, 1935, insofar as is pertinent here, provides:

"Before issuing such duplicate bond, warrant, or coupon, the board must require the **person** demanding the same to execute and deliver to the treasurer of the county a bond, payable to the county in double the amount of the bond, warrant, or coupon, with at least two good and sufficient sureties, who must be required to justify as in case of attachment, the conditions of such bond being that the principal and sureties therein will indemnify and save harmless the county from all loss, costs, or damages by reason of the issuing of the duplicate, and will pay to any person entitled to receive the same, as the lawful holder of the original bond, warrant, or coupon, all moneys received upon such duplicate." (Emphasis mine.)

The word "person" in its ordinary legal significance, does not embrace a state or government. (West Coast Mfg. & Inv. Co. v. West Coast Imp. Co., 66 Pac. 97, 103.) The term "person" as used in the acts of congress touching internal revenue, does not include a state. (United States v. Baltimore & O. Ry. Co., 84 U. S. (17 Wall) 322, 329.) And again in Scott v. Frazer D.C.N.D. 258 Federal 669, 671, it was held that the fourteenth amendment to the Federal Constitution is inapplicable to a state.

Opinion No. 136.

**State—Indemnity Bond Given, By,
When not required—Counties—
Warrants—Banks**

Held: Where a county issues a warrant in payment of a claim by the banking department to the state treasurer and warrant is lost, the county may not insist on a bond before issuing a duplicate. We further hold that the word "person" as used in Section 4627, Revised Codes of Montana, 1935, does not embrace a state or government.

September 29, 1943.

Mr. W. A. Brown
State Bank Examiner
State Capitol
Helena, Montana

I find nothing in the codes to warrant my holding that the State of Montana should be required to give bond of indemnity in case of lost warrant; neither do I find any thing in the statutes that would give to the state treasurer authority to purchase such a bond.

Therefore, it is my opinion that where a county issues a warrant in payment of a claim by the banking department to the state treasurer and warrant is lost, the county may not insist on a bond before issuing a duplicate. We further hold that the word "person" as used in Section 4627, Revised Codes of Montana, 1935, does not embrace a state or government.

Sincerely yours,
R. V. BOTTOMLY
Attorney General