Opinion No. 82

State Auditor—County Treasurer—
Warrant, Duplicate—Bond,
County Treasurer.

Held: A county is not a "person," as
        that term is used in Section
        159, Revised Codes of Montana,
        1935, and a county treasurer is

not required to deposit the indemnity bond mentioned therein as a condition precedent to securing a duplicate warrant when the original warrant issued by the State Auditor in payment of a claim by a county has been lost or destroyed.

November 24, 1947

Mr. John J. Holmes
State Auditor
Capitol Muilding
Helena, Montana

> Attention: Mr. Thomas C. Smith
> Deputy State Auditor

Dear Mr. Holmes:

You have presented this problem:

When a warrant issued by the State Auditor in payment of a claim by a county is lost or destroyed, may the State Auditor issue a duplicate warrant without the County Treasurer's filing an indemnity bond as provided by Section 159, Revised Codes of Montana, 1935?

Section 159, Revised Codes of Montana, 1935, provides:

"The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word 'duplicate', and no such warrant shall be issued or delivered by the state except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant."

Is a county—acting through its treasurer—included within the term "person" and thus required to furnish the indemnity bond specified above?

When the siutation was reversed and it was the state which had lost or destroyed a county warrant, this in Section 4627, Revised Codes of office ruled the word "person" as used in section 4627,ä Revised Codes of Montana, 1935, in a requirement parallel to the one here presented, does not embrace a state or government. (Opinion No. 136, Volume 20, Report and Official Opinions of the Attorney General).

The word "person" is disarmingly simple in appearance; but the varied interpretations which have been placed upon it indicate the courts of this nation have legislated various meanings for it quite different from the layman's understanding of it. When it has served the judicial purpose, it has been held to include counties, cities, courts, nations, corporation, school districts, and towns; but it has been held on other occasions not to include them. To explain the diversity of rulings, courts have long said the meaning of the word must often be divined from the sense in which it is used in any particular instance, it must be appraised in relation to the context and intent with which it is employed. (48 C. J. 1038).

> "A 'county' is but an agency or arm of the state government, created, organized, and existing for civil and political purposes, particularly for the purpose of administering locally the general powers and policies of the state, and as a matter of public convenience in the administration of the government. It is generally a subordinate part of the sovereignty of the State itself, and is not an independent governmental entity."

> Roosevelt County v. State Board of Equalization, 162 Pac. (2d) 887, 889.

See also, Bottomly v. Meagher County, 114 Mont. 220; 133 Pac. (2d) 770.

It is elementary a county is one of the civil divisions of the state for political and judicial purposes, created by the sovereign power of the state of its own will. It has only such powers as are expressly provided by law or are necessarily implied by those expressed. (Section 4441, Revised Codes of Montana, 1935, and cases annotated

thereunder). Nowhere do our statutes specifically or impliedly authorize a county to furnish an indemnity bond for the purpose here under discussion.

Section 4750, Revised Codes of Montana, 1935, among other things requires the County Treasurer to "receive all moneys belonging to the county, . . . safely keep the same, . . . rendering account thereof as required by law." Section 466, Revised Codes of Montana, 1935, sets out the amounts of the bonds required of County Treasurers in counties of the various classes; and Section 475, Revised Codes of Montana, 1935, provides the conditions of every official bond. Section 475 reads:

"The conidtion of every official bond must be that the principal shall well, truly, and faithfully perform all official duties then required of him by law, and also such additional duties as may be imposed on him by any law of the state subsequently enacted, and that he will account for and pay over and deliver to the person or officer, entitled to receive the same, all moneys or other property that may come into his hands as such officer. The principal and sureties upon any official bond are also in all cases liable for the neglect, default, or misconduct in office of any deputy, clerk or employee, appointed or employed by such principal.

"All official bonds must be signed and executed by the principal and two or more sureties, or by the principal, and one or more surety companies organized as such under the laws of this state, or licensed to do business herein."

The law abhors a useless act—and to require the County Treasurer to secure the indemnity bond provided for by Section 159, supra, as a condition precedent to securing from the State Auditor a duplicate warrant where the original warrant has been lost or destroyed would be requiring a second bonding of the County Treasurer to perform his official duty faithfully.

It is, therefore, my opinion a county is not a "person," as that term is used in Section 159, Revised Codes of Montana, 1935, and a county treasurer is not required to deposit the indemnity bond mentioned therein as a condition precedent to securing a duplicate warrant when the original warrant issued by the State Auditor in payment of a claim by a county has been lost or destroyed.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General