



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

WALD C. MANN
ATTORNEY GENERAL

March 16, 1939

Hon. Orville S. Carpenter
Chairman and Executive Director
Texas Unemployment Compensation Commission
Austin, Texas

Dear Sir:

Opinion No. 0-385
Re: Is the State Comptroller authorized
to issue duplicates of forged unemploy-
ment compensation warrants?

We are in receipt of your request of February 20th in which you ask this department for an opinion as to whether or not the Comptroller of Public Accounts has the authority to issue duplicates of forged unemployment compensation warrants to proper payees under the following circumstances:

"In the administration of the Texas Unemployment Compensation Act (Art. 5221-b Vernon's Ann. Stat. 1925), the Texas Unemployment Compensation Commission certifies to the State Comptroller of Public Accounts names of persons entitled to benefits and the amounts of money to which such persons are entitled. The Comptroller then issues warrants in payment of such benefits, which warrants are mailed directly to the persons entitled to them.

In some instances, warrants have been received or taken by a person other than the person to whom they are payable and have been offered for payment by such person not entitled thereto on the forged indorsement of the payee.

If such forgeries are discovered before the forged warrants are presented to the State

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Treasurer, payment is refused; where the forgery is not discovered until after payment has been made by the Treasurer, the warrant is promptly returned to the indorsers thereof. In any case, payment is either never made, or, if made, is always recovered.

There seems to be some question, however, as to the authority of the State Comptroller to issue to the proper payee a duplicate of such forged warrant. Will you please advise us, therefore, if the State Comptroller is authorized to issue duplicates of such forged warrants?

The Comptroller of Public Accounts of the State of Texas must look to the written law of the state for his authority to issue duplicate warrants. His power is circumscribed by statute. Article 4365, R.C.S. of Texas, 1925, defines the extent and limitation of that power.

Said section reads as follows:

"The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will

hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County."

The statutes of the state are silent upon the authority of the Comptroller to issue duplicate warrants except in the express instance of loss or destruction. Consequently, where a warrant is still in existence, and the procedure outlined in the above quoted article, including filing of applicant's bond, has not been followed, the Comptroller has no authority to issue a duplicate.

Whether the forged warrant has been paid by the State Treasurer or not, the rightful payee has no claim upon the State Comptroller for a duplicate in the absence of proof that the original instrument has been lost or destroyed. His only redress is against the wrongdoers guilty of the forgery regardless of the hardship this form of remedy places upon him.

According to 34 Tex. Jur. p. 636:

"A state, municipal, county, district or school warrant is an instrument, generally in the form of a bill of exchange or order, drawn by an officer upon the person having charge of the public funds, directing him to pay an amount of money specified to the person named, or his order, or to bearer. In substance warrants are mere promises to pay the amount

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specified; they are not bonds, nor are they negotiable instruments; they are only prima facie evidences of an indebtedness, serving as a convenient mode of conducting the public business."

The original payee remains the rightful owner of the warrant and is legally entitled to recover it from the possessor despite successive indorsements.

It is our opinion that Article 4365 prohibits the issuance of a duplicate warrant where the loss or destruction of the original has not been called to the attention and proven to the satisfaction of the Comptroller in the manner provided in said statute.

Trusting that this answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Dick Stout*
Dick Stout
Assistant

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APPROVED

Genesio. Mann
ATTORNEY GENERAL OF TEXAS

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