

County Treasurer, Liability of Acts of Deputy. Limitations of Actions, on Official Bonds.

The county treasurer and his bondsmen are liable for violations of official duties by a deputy treasurer. Actions against the treasurer and his bondsmen for such violations must be commenced within two years from the commission of the act.

Helena, Montana, August 31, 1908.

Mr. C. A. Tuttle,
Chairman Board County Commissioners,
Anaconda, Montana.

Dear Sir:—

Your letter of the 26th inst., enclosing copy of report of the state examiner, regarding the shortage in the office of the county treasurer of Deer Lodge county, due to the defalcation of Mr. G. M. Johnston. You request information as to the liability of Mr. E. J. Nadeau, the present county treasurer, and Mr. Harry Denny, ex-county treasurer, and Mr. P. D. Twohy, ex-county treasurer, the defalcation of Mr. Johnson having occurred while he was deputy under each of the above named county treasurers. You also ask if demand should be made upon the treasurer and his bondsmen prior to the suit.

We herewith enclose you a copy of the opinion given to County Attorney Lyndes, on June 7th, 1906, discussing the question of the liability of a public officer and his bondsmen for violation of official duty. In this opinion, we held that a liability upon an official bond is "a liability created by statute," and is therefore barred by the statute of limitations after two years from the commission of the act creating the liability. This opinion, you will notice, is supported by many decisions of the supreme courts, construing laws identical or substantially the same as the laws of this state.

Therefore, the liability of Mr. Denny and Mr. Twohy, and their bondsmen, is barred in toto by the statute of limitations, and no action can be successfully maintained against them, if they see fit to plead the statute of limitations.

Also, the right of action is barred against Mr. Nadeau and his bondsmen for the amount of all licenses issued by Mr. Johnston the date of issuance of which is more than two years prior to the date of filing the complaint against Mr. Nadeau and his bondsmen. By going over the exhibit attached to the state examiner's report, you can readily determine the licenses which were issued within the last two years, and it would be only for the amount of such licenses that a suit could be successfully maintained against Mr. Nadeau and his bondsmen. It is therefore important to have the suit started at the earliest possible moment, so as to include as large an amount of the licenses issued as possible. While a demand upon Mr. Nadeau and his bondsmen, prior to beginning suit, may not be absolutely necessary, we think it the better policy to make such a demand before bringing suit, and to allege in the complaint the fact that the demand was made. The opinion, a copy of which we enclose you, is also set out at page 349, Opinions of the Attorney General, 1905-6. In taking this matter up with your county attorney, it would be well to call his attention to this opinion, as the authorities cited therein may be of assistance to him in bringing action against Mr. Nadeau and his bondsmen.

Under Section 384, Revised Codes of Montana, Laws 1907, there can be no question but what Mr. Nadeau and his bondsmen are liable for

whatever amount you are able to prove that Mr. Johnston embezzled within the two years prior to the beginning of the action.

We herewith return to you the report of the state examiner, as per your request.

Yours very truly,

ALBERT J. GALEN,

Attorney General.