

**Misdemeanors, Prosecution for. Statute of Limitations,
as to Misdemeanor.**

The statute of limitations for all misdemeanors is one year.

February 3, 1916.

Hon. T. F. Shea,
County Attorney,
Deer Lodge, Montana.

Dear Sir:

I am in receipt of your letter of February 1st, wherein you seek my advice as to whether or not Section 9028, Revised Codes of 1907, applies to prosecutions in justices and police courts. You direct my attention to Section 801 of the Penal Code of California, which the Supreme Court of that state has construed as having no application to prosecutions for misdemeanors instituted in justices and police courts (ex parte Blake, 102 Pac. 609).

Section 801 of the Penal Code of California, reads as follows:

"An indictment for any misdemeanor must be found or an information filed within one year after its commission."

Section 9028, Revised Codes of Montana, 1907, provides:

"An indictment for any misdemeanor must be found, or an information filed or complaint made, within one year after its commission."

A comparison of these two sections discloses that our statute is broader than that of California, in that the words "or complaint made" are included within our statute. The Supreme Court of Montana has said, with reference to this section:

"Section 9028, above, is a general statute of limitations, applicable to misdemeanors; and it is an elementary rule of statutory construction that an exception to such a statute cannot be enlarged beyond what its plain language imports, and that, whenever the exception is invoked, the case made must clearly and unequivocally fall within it."

State v. Clemens, 40 Mont. 567, 569.

In as much as the Supreme Court in the case above cited, has held Section 9028 to be a general statute of limitations, it follows that its provisions are applicable to the prosecution of all misdemeanors.

Yours very truly,

J. B. POINDEXTER,

Attorney General.