

**Warrants. State and County—Checks, State and County Treasurer's—Time Within Which Same May be Presented for Payment—Statute of Limitations—Cancellation of State and County Warrants and State and County Treasurer's Checks.**

State and county warrants remaining outstanding for more than eight years after they have been called for payment, and checks of State and County Treasurers eight years after issuance, are outlawed and are barred from collection.

January 10, 1917.

Mr. H. S. Magraw,  
State Bank Examiner,  
Building.

Dear Sir:

I am in receipt of your letter of the 8th inst. in which you state that it is the condition in practically all of the counties of this state that County Treasurer's checks and County Warrants have been outstanding for a number of years, many of which will never be presented

for payment, and asking whether or not there is any limitation of time when this paper ceases to be of value, and if so, what is the limitation.

The statutes contain provisions with reference to warrants which have been issued but never claimed or delivered. Section 173 provides that the State Auditor shall cancel all warrants remaining unclaimed for six months after date of issue, while Section 295v provides that the Board of County Commissioners must cause to be cancelled all county warrants that have remained for one year or more uncalled for.

I fail to find, however, any statute relating to county or state warrants which have been called for payment or checks which have been issued by the county treasurers or the state treasurer and not presented for payment and which have been outstanding for any number of years.

So far as County and State Warrants are concerned, they are in fact promissory notes of the county or state.

"A County Warrant, is, in legal effect, a promissory note of the County." Board v. Day, 19 Ind. 450.

"A municipal warrant is an instrument containing a promise to pay, to be acknowledged the date upon which it is issued."

2 Dillon Mun. Corp. (5th) Ed. Sec. 865.

5 McQuillen, Mun. Corp. Sec. 2241.

Every county is a body politic and corporate (Sec. 2870) and has power to sue and be sued, (Section 2873).

Section 6445 provides that an action upon any contract, obligation or liability, founded upon an instrument in writing, must be commenced within eight years.

This statute is applicable to counties and states as well as individuals. The Nebraska statute is very similar to the Montana statute, and in construing that statute the Supreme Court of Nebraska said: "Section 10 of Title 2 provides 'an action upon a specialty or any agreement, contract or promise in writing or foreign judgment can only be brought within five years after the cause of action accrues'."

"This provision applies as well to actions where counties or other municipal corporations are parties as between persons. The law recognizes no distinction in suiters but is the same rule unto all."

Brewster v. Otoe County, 1 Neb. 373.

The case of Goldman v. Conway County, 10 Fed. 880, was an action instituted to recover on certain warrants issued by Conway County, Arkansas, and in that case it was held that not only counties but the state as well could avail itself of this defense under the general statute.

"In this state counties are declared to be bodies corporate, with power to contract and sue and be sued. This carries with it the right when sued to interpose every defense legal and equitable, including the statute of limitations. Not only are counties, and all municipal corporations in this state, within the protection afforded by the statute of limitations, but the state as well."

Goldman v. Conway County, 10 Fed. 888.

In actions instituted against counties for the purpose of compelling the payment of outstanding warrants, it has uniformly been held that defenses under the general statute of limitations may be interposed.

"A cause of action upon a warrant comes within the operation of the statute of limitations from the time when the warrant becomes payable according to the method of procedure prescribed by the statutes and laws of that particular state."

2 Dillon Mun. Corp. (5 Ed.) Section 865.

5 McQuillen, Mun. Corp. Section 2260.

"It is well settled that counties may plead the statute of limitations to actions founded on contracts and unliquidated demands; Dillon Mun. Corp. Section 533; Baker v. Johnson County, 33 Iowa 151. Such a plea may be interposed by a city in an action upon its notes; Decordova v. Galveston, 4 Tex. 470. In Louisiana it is held to be a good plea to an action of warrants issued by the police jury of a Parish, which are analogous, if not identical, with our county warrants. Perry v. Parish, 21 La. Ann. 645. And the statute begins to run against interest coupons attached to negotiable bonds issued by municipal corporations from the time of maturity although they remain attached to the bonds which represent the principal debt. Avery v. Dubuque, 98 U. S. 470."

And to the same effect:

Goldman v. Conway County, 10 Fed. 888.

Apache County v. Barth, (Ariz.) 53, Pac. 187.

Crodup v. Ramsey County, (Ark.) 15, S. W. 458.

Thompson v. Searchy, 57 Fed. 1030.

Galbraith v. Knoxville, (Tenn.) 58, S. W. 643.

Board v. Taundler, (Kan.) 59, Pac. 549.

King Iron Bridge Co. v. Otoe County, 124 U. S. 459.

As to the time when the statute begins to run the decisions are not harmonious, some holding that it begins to run from the date the warrant is issued, but the greater weight of authority is to the effect that the statute only begins to run from the time there is money in the treasury available for the payment of the warrant or from the time the warrant is called for payment.

The case of Board of County Commissioners of Seward County v. Shepherd, (Kan.) 80, Pac. 36, was an action instituted to enforce the payment of certain warrants issued by Seward County. The warrants were issued during the years of 1887-8, being presented for payment when issued and being indorsed 'Not paid for want of funds' and numbered and registered. On January 5, 1894 the county treasurer of Seward County called these warrants for payment, the call being published on that date. The warrants were not presented for payment until after five years had elapsed from the date the call was published, and in 1900, more than five years after the call was published, suit was instituted. The County interposed as a defense the statute of limitations, and to this defense the courts sustained a demurrer. On appeal the action of the court in sustaining the demurrer was reversed.

the court holding that action was barred as the statute commenced to run from the date the call was published.

"In Section 6011, Gen. St. 1901, it is the duty of the County Treasurer when a warrant is presented to either pay it or register and endorse thereon a proper registry number, in the regular order of its presentation, and the words 'presented and not paid for want of funds' with date and sign said indorsement."

"Section 6012 Gen. St. 1901 provides that it shall be the duty of any treasurer whenever any money comes into his hands by virtue of his office, to set apart a sufficient sum to pay any or all warrants that have been registered in compliance with the provisions of this act, and keep the same until called for; and it shall be the duty of every county treasurer to publish in the official county paper between the first and fifteenth days of February and August in each year a call for the redemption of such warrants as he can pay, describing the warrants by giving their issue number, registry number and amount; and interest shall cease on each of said warrants on and after such publication, and the statute of limitations commenced to run against all warrants designated in the call when the call was published, and in the absence of any condition of circumstances which would toll the statute, an action would be barred on such warrants after five years from the time of such call."

Board v. Shepherd, 80 Pac. 36.

And to the same effect:

King v. Otal County, 124 U. S. 459.

Grayson v. Latham, (Ala.) 4 So. 200.

Truhill v. Chamberlain, (Cal.) 4, Pac. 646.

Wetmore v. Monrow County (Iowa) 34 N. W. 751.

Barnes v. Turner, (Okla.) 78 Pac. 108.

Forbes v. Board, (Colo.) 47 Pac. 388.

Bacon v. Dawes County, (Neb.) 92, N. W. 313.

I am therefore of the opinion that county and state warrants remaining outstanding for more than eight years after they have been called for payment, are barred by Section 6445 and may be canceled.

With reference to a check issued by a County Treasurer or by the State Treasurer, this is in the nature of a demand note and is due and payable on the date of issue and the statute would begin to run from the date of issue and after eight years from such date the same would be barred.

The proper procedure to procure the cancellation of warrants remaining outstanding after being called, and to procure the cancellation of checks not presented for payment by the banks on which the same are drawn for a period of eight years after date of issuance, would be to have the county treasurers report same to the Boards of County Commissioners and have such boards order the same cancelled, while

state warrants and checks issued by the Treasurer should be reported to the Board of Examiners and by such Board ordered cancelled.

Respectfully,

S. C. FORD,

Attorney General.