

Statute of Limitations—County Warrants—Warrants—Indebtedness.

Indebtedness represented by county warrants may not be charged off after the lapse of eight years from the date upon which they have been called for payment.

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State Examiner,
Helena, Montana.

December 30, 1924.

My dear Mr. Skelton:

You have submitted for an opinion thereon the following question:

“Where warrants have been registered and the treasurer has made a call to redeem same, and some of the holders have failed to present same for payment can such warrants be charged off after a period of eight years?”

Section 4753, R. C. M. 1921, provides for the registration of warrants in the event that there are not sufficient funds to pay the same upon presentation.

The next section provides for the calling of warrants upon giving the requisite notice.

Section 4758 then provides:

“If such warrants be not re-presented for payment within sixty days from the time of the notice hereinbefore provided for is given, the fund set aside for the payment of the same

must be by the treasurer applied to the payment of unpaid warrants next in order of registry. The board of county commissioners may, on application and presentation of warrants properly indorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated."

The supreme court of this state in the case of *Greeley v. Cascade County*, 22 Mont. 580, 588, held that an action cannot be maintained against a county on a county warrant, but that the holder has a remedy in mandamus.

Section 4450 provides that no execution upon a judgment against the county or any county officer can be issued when the judgment is to be paid by the county.

In the state of Mississippi there is a statute similar to ours prohibiting the issuance of execution against the county and in that state it has been held that because of that fact the statute of limitations does not run against a county warrant.

Taylor v. Chickasaw County, 12 So. 210;

Klein v. Smith County, 54 Miss. 254;

Carroll v. Tishamingo County, 28 Miss. 38.

In some states it has been held that the statute of limitations runs against such claims the same as against other instruments for the payment of money.

In 25 Cyc. 1037 it is said:

"A county warrant, to which the seal of the county is attached, is a specialty, and governed by the statute applicable to sealed instruments generally. County warrants not under seal are governed as to the period of limitations by the statute governing other instruments for the payment of money, in the absence of legislation expressly providing a different limitation."

In 15 C. J. 609 it is said:

"The period of limitation for bringing suit on county warrants depends of course on statutory provisions. If there are no statutes especially relating to warrants, the period of limitation will be that governing actions on written contracts generally, or actions on sealed instruments, in jurisdictions where a seal on the warrant is required. In some jurisdictions, however, there are special provisions relating to county warrants. There is some diversity of holding, even in the same jurisdictions, in respect to the time when the statute of limitations begins to run against the right to bring an action on a county warrant. In one state it has been held that the statute commences to run from the time of issuance and delivery of the warrant. In others it is held that the statute does not begin to run from the date of issuance or of refusal of payment, but only from the time when the money for payment is collected. If the warrant is payable out of

a particular fund, the county cannot avail itself of the statute of limitations without first showing that it had provided such fund; and where a statute creates a special limitation by providing for publication of notice that certain outstanding warrants must be presented for payment within a certain time or they will be cancelled, the limitation does not begin to run until the publication has been made. It has been held in one state that no statute of limitation operates against the right to bring mandamus because the party entitled to payment cannot coerce satisfaction by suing out execution."

Whatever the rule may be as to whether such claims are barred by the statute of limitations, the obligations represented by the warrants must be treated as valid obligations until the plea of the bar of the statute has been successfully interposed in an appropriate court action.

There may exist some disability on the part of the holder of the warrants that would prevent the running of the statute, such, for instance, as insanity on the part of the holder. (Sec. 9049, R. C. M. 1921.)

It is, therefore, my opinion that warrants not presented for payment within eight years after they have been called for payment may not be charged off, but must be treated as valid obligations until the bar of the statute has been successfully interposed in an appropriate court action.

Very truly yours,

L. A. FOOT,

Attorney General.