

Although a county may avail itself of the statute of limitations (37 C. J. 716, note 54), we do not find any statute or constitutional provision requiring it to do so. Statutes of limitations are not matters of substantive right, and are available only as defenses (37 C. J. 684.) The statute of limitations ordinarily does not operate by its own force as a bar, but as a defense to be pleaded by the party invoking the benefit of its protection. If the statute is not pleaded in a proper time or manner, it is deemed to be waived (37 C. J. 1313-14.) In the absence of a constitutional or statutory provision requiring a county to avail itself of the statute of limitations, it is my opinion that the county may waive it if it so desires.

Opinion No. 226.

Counties—Bonds—Statute of Limitations, Waiver of.

HELD: Assuming that a county may avail itself of the statute of limitations on its outstanding bonds, it is not required to do so.

January 10, 1936.

Hon. Frank H. Johnson
State Examiner
The Capitol

You have submitted the following:

“Our advice has been requested as to whether two outstanding county bonds issued on September 1, 1881, that have been presented recently to the County Treasurer, can be paid. We are advised by the County Treasurer that he has the money in the Bond Fund that was raised by taxation to pay same. Your opinion will be appreciated.”

Although no facts are stated, we assume without deciding from the foregoing that the statute of limitations has run on the bonds in question, and that what you wish to know is whether the county may nevertheless pay them.