

Opinion No. 1.

Warrants—Checks—State—County City—Statute of Limitations—Cancellation of Checks—Due and Payable, Warrants—Time, within which warrants may be presented or become due and payable.

Held: County, state, city and town warrants remaining outstanding for more than eight years after date of the call for payment, and checks drawn by state, county, city or town, remaining unpaid for more than eight years after date drawn, are barred by the provisions of Section 9029, Revised Codes of Montana, 1935, and may be cancelled.

January 1, 1945.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Dear Mr. Brown:

You have advised me that in the various counties of the state old outstanding warrants have accumulated. You are desirous of directing the attention of the county clerks and county treasurers to the opinion found in Volume 7, page 16, Report and Official Opinions of the Attorney General, and ask whether, under the present statutes of this state, said opinion is applicable.

The opinion to which you call attention was written January 10, 1917, and holds as follows:

“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.”

I have examined the present statutes applicable to the question and find no material change which would alter the holding of said opinion. Recent opinions of our Supreme Court confirm the holding of the opinion referred to above.

Section 9029, Revised Codes of Montana, 1935, provides that “an action upon any contract, obligation, or liability, founded upon an instrument in writing” must be commenced within eight years.

In the case of State ex rel. De Kalb v. Ferrell, County Treasurer, 105 Mont. 218, 70 Pac. 290, 292, the court quoted with approval the definition of “warrant” given in the case of Savings Bank and Trust Company v. Gelbach, 8 Wash. 497, 36 Pac. 467, as follows:

“A warrant . . . is a promise to pay it, in its order of issue, when money applicable to it comes into the treasury; and its maturity, by analogy with a note, is the time when the treasurer gives notice of his readiness to pay it, and stops interest.”

With reference to a city warrant, our Supreme Court in the case of State ex rel. Clark v. Bailey, 99 Mont. 484, 486, 44 Pac. (2d) 740, 743, in a case involving special improvement bonds, said:

“. . . the statute of limitation does not begin to run until the ‘call of the treasurer, or until the holder had an immediate cause of action.’” (Citing cases.)

In the case of State v. Ferrell, supra, the court said:

“The statute of limitations is by statute made a legal defense, and we conclude that such defense may be asserted by the defendant (the county) in this action.” (Parenthesis mine.)

I concur in the opinion county and state warrants outstanding for more than eight years after they have been called for payment are barred by Section 9029, Revised Codes of Montana, 1935, and may be cancelled. The same applies to city and town warrants.

With reference to checks drawn by the state, county, cities and towns, our statute, Section 8592, Revised Codes of Montana, 1935, defines a check as follows:

“A check is a bill of exchange drawn on a bank payable on demand.”

And Section 8593, Revised Codes of Montana, 1935, provides:

“A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to

the extent of the loss caused by the delay.”

Therefore, a check is due and payable when drawn and the statute of limitations would begin to run from the date it is drawn.

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 for a period of eight years after date of issuance would be for the county treasurer to report the same to the board of county commissioners and the city treasurer to the city council and make an order cancelling the same. State warrants and checks should be reported to the Board of Examiners and by such board ordered cancelled.

It is therefore my opinion that state, county, city and town warrants remaining outstanding for more than eight years after the date of the call for payment, and checks drawn by the state, county, city or town, remaining unpaid for more than eight years after date drawn, are barred by the provisions of Section 9029, Revised Codes of Montana, 1935, and may be cancelled.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General