Opinion No. 101

Sheriffs—Boards of County Commissioners—Statute of Limitations—Laches—County Claims.

Held: 1. Mileage claims for the years 1933 through 1938 which were submitted to a Board of County Commissioners in 1940 are at the present time barred by the Statute of Limitations and may not be properly approved by such Board of County Commissioners.

March 22nd, 1950.

Mr. Charles L. O'Donnell
County Attorney
Blaine County
Chinook, Montana

Dear Mr. O'Donnell:

You have requested my opinion as to whether certain claims presented to the Board of County Commissioners of Blaine County are valid claims and should be approved by the Board of County Commissioners. The facts as you have presented them are that in 1940 the late C. B. Reser, Sheriff of Blaine County prepared claims for mileage traveled in making investigations and similar services for the years from 1933 to 1938. These claims were never acted upon by the Board of County Commissioners and at the time of Mr. Reser's death in 1949 they had apparently been forgotten. In going through Mr. Reser's records after his death the claims were discovered and the heirs of the late Sheriff have once again presented the claims to the Board of County Commissioners.

In addition to the above mentioned data the following facts are pertinent to this opinion. During the period of years between 1933 and 1938 Sheriffs over the State of Montana put in claims for and were compensated for mileage at the rate of seven cents (7c) per mile. On January 7th, 1938, then Attorney General issued Opinion No. 12, Volume 18, Report and Official Opinions of Attorney General, holding that Sheriffs were entitled to ten cents (10c) per mile for distances actually and necessarily traveled in making investigations and rendering similar services. Upon the authority of this opinion many of the Sheriffs over the State put in claims for mileage based upon the difference between seven cents (7c) and ten cents (10c) per mile for the years 1933 to 1938. The claim under consideration in the instant case falls into that category.

A Montana case involving the validity of one of the class of claims mentioned in the preceding paragraph was that of Weir v. Silver Bow County, 113 Mont, 237, 124 Pac. (2d) 1003. Briefly the facts of the case were that Lawrence Weir, the Sheriff of Silver Bow County, submitted claims seeking to recover the difference between ten cents (10c) per mile and the amounts he had been paid for mileage for the years 1933 to 1938. The claims were disallowed by the Board of County Commissioners. One of the contentions of the Board of County Commissioners was that these claims were invalid by reason of Section 4605, Revised Codes of Montana, 1935. Section 4605 (now Section 16-1802, Revised Codes of Montana, 1947) is as follows:

> "No account must be allowed by the board unless the same is made out in seperate items, the nature of each item stated, and is verified by affidavit showing that the account is just and wholly upaid; and if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. **Every claim against the County must**

be presented within a year after the last item accrued." (Emphasis mine).

The Supreme Court speaking through Mr. Justice Angstman overruled the contention that Section 4605 prevented the payment of the claims and held as follows at page 241 of the Montana Reports:

> "Section 4605, requiring all claims to be presented within a year after the last item accrued, is a provision enacted for the benefit of the County Commissioners to enable them to investigate the merits of claims while evidence is available from which their merits may be inquired into. That purpose was fulfilled when the claims were originally presented. They were then investigated and found to be legitimate and were allowed. The County Commissioners then determined the fact that the work had been done by the Sheriff necessitating the travel. The legal effect of the additional claims amounts to but amendments of the prior claims to the extent of asking for the difference between what the Sheriff had received and the 10 cents per mile to which he was entitled under the law. (Sec. 4885, Rev. Codes.)"

Having determined that the claims under consideration meet the requirements of having been presented within a year, there remains th question of whether or not an action at law on such claims would not, at the present time, be barred by the Statute of Limitations.

Section 93-2609, Revised Codes of Montana, 1947, provides that an action for claims against a County, which have been rejected by the County Commissioners, must be commenced within six months after the first rejection thereof by such Board. While the facts you have presented do not state that the Board of County Commissioners have ever specifically rejected the claims under consideration, I am of the opinion that the claims in question must be deemed to have been rejected after the passage of a reasonable length of time, and that the claims are now barred by the Statute. In the Washington case of Bullock v. Yakima Valley Transportation Co. et al., 108 Wash. 413, 184 Pac. 641, affirmed 108 Wash. 413, 187 Pac. 410, the court had under consideration a statute which stated that a party having a claim against any County could bring an action in any court of competent jurisdiction after the claim had been presented and disallowed by the Board of County Commissioners. In ruling on the question of whether or not sufficient time had elapsed to constiute a rejection of the claim, the court held as follows:

> "We hold that, under this statute, after the County Commissioners have failed to act within a reasonable time, it will be conclusively presumed, as a matter of law, that they have rejected the claim. . . . This claim was filed with the County Commissioners on the 6th day of April, 1917. This suit was brought nearly 7 months thereafter, on the 19th day of November, 1917. It is perfectly plain that more than a reasonable time was allowed the Commissioners within which to act upon the claim, and, having

failed to act, we hold that they have thereby rejected the claim, and the respondent had a right to maintain her suit."

It is also my belief that the claims of the late Sheriff of Blaine County may be barred by the equitable doctrine of Laches. The doctrine of Laches and its application are well defined in the case of Montgomery v. First National Bank of Dillon, 114 Mont. 395, 136 Pac. (2d) 760, wherein the Montana Supreme Court held as follows at page 408 of the Montana Reports:

> "Laches is a doctrine of equitable coagnizance and has existed since the beginning of equity jurisprudence. It may be considered by a probate court as a necessary incident to the powers expressly grated to it. "There is no absolute rule as to what constitute laches or staleness of demand, and no one decision constitutes a precedent . . . for another; each case is to be determined according to its own particular circumstances." (30 C.J.S., Equity, Sec. 115.)
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> Laches is negligence or omission seasonably to arrest a right. "The idea is embodied also in the words 'acquiesence,' 'election,' 'estoppel,' abandonment,' 'ratification,' and 'waiver'." (19 Am. Jur., Sec. 493, page 340). This court in Riley v. Blacker, 51 Mont. 364, 370, 152 Pac. 758, 759, made the following statement: "Laches, considered as a bar independent of the statute of limitations, is a concept of equity; it means negligence in the assertion of a right; it is the practical application of the maxim, 'Equity aids only the vigilant;' and it exists when there has been unexplained delay of such duration or character as to render the enforcement of the asserted right inequitable." As said by the Supreme Court of the United States: "We need only refer to the many cases decided in this court and elsewhere, that a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce. (Citing Cases.) There always comes a time when the best of right will by reason of neglect, pass beyond the protecting reach of the hands of equity, and the present case fully illustrates that proposition." (Moran v. Horsky, 178 U. S. 205, 20 S. Ct. 856, 857, 44 L. Ed. 1038)."

Upon the question of whether or not the facts of the instant situation would give rise to the equitable defense of laches, I take no position. Such decision can only be made by the proper tribunal sitting as a court of equity.

Inasmuch as it is my considered judgment that the claims of the late Sheriff are now barred by the Statute of Limitations, my advice to the Board of County Commissioners is that they cannot properly approve such claims for payment.

It is therefore my opinion that mileage claims for the years 1933 through 1938 which were submitted to a Board of County Commission-

ers in 1940 are at the present time barred by the Statute of Limitations and may not be properly approved by such Board of County Commissioners.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.