

VOLUME NO. 37

OPINION NO. 40

CONTRACTS WITH STATE - Application of one year statute of limitation in contract actions against the State of Montana;
STATE OF MONTANA - Application of one year statute of limitation in contract actions against the State of Montana;
STATUTES OF LIMITATION - Application of one year statute of limitation in contract actions against the State of Montana;
REVISED CODES OF MONTANA, 1947 - Section 83-602.

HELD: Section 83-602, R.C.M. 1947, provides three separate periods of limitation applicable to disputes arising from express contracts with state agencies.

(1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within ninety (90) days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in the district court.

(2) A contractor who timely submits his dispute to an agency having an administrative procedure but who fails to bring an action in the district

court within one year after a final adverse decision by the agency, is barred from thereafter litigating his claim in the district court.

(3) In cases where no settlement procedure is provided by a contracting agency, a simple one year statute of limitations, commencing at the time the cause of action arises, applies.

1 July 1977

George L. Mitchell, Esq.
Legal Counsel
University of Montana
Missoula, Montana 59801

Dear Mr. Mitchell:

You have requested my opinion regarding the scope of the one year statute of limitations set forth in section 83-602, R.C.M. 1947, and whether said section has been the subject of appellate review.

Section 83-602, R.C.M. 1947, provides:

Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and said agency, the contractor, before proceeding to bring an action in court under the provisions of this act, must resort to such procedure within the time specified in his contract or, if no time is specified, within ninety (90) days after the question or dispute has arisen; provided, however, that in the case where a settlement procedure is provided by said contracting agency, all actions authorized hereunder must be commenced within one (1) year after a final decision has been rendered pursuant to such settlement procedure, and, provided further, that in the case where no settlement procedure is provided by said contracting agency, the action must be commenced by the contractor within one (1) year after the cause of action has arisen.

There are no cases mentioned in the annotation following section 83-602 either in the main volume of Revised Codes of Montana Annotated or in the 1975 Cumulative Pocket Supplement. I have also reviewed the applicable topics of the

Montana Digest and similarly find no case concerning the section.

The language of section 83-602 is plain and explicit; the statute speaks for itself. Hammill v. Young, 540 P.2d 971 (Mont. 1975). Chapter 6 of Title 83 was enacted as chapter 138 of the Laws of 1955, entitled "An Act Permitting Actions on Express Contracts Against the State of Montana, and Describing the Practice and Procedure Therefor." The chapter is exclusively concerned with disputes arising from express contracts entered into with the State of Montana or any agency, board or officer thereof, see section 83-601, R.C.M. 1947. The statute of limitations set forth in section 83-602 applies only to disputes arising from such express contracts. The Uniform Commercial Code does not supercede or modify section 83-602. See section 87A-10-103, R.C.M. 1947.

The precise period of limitations depends upon whether the contracting state agency, board or officer has an established administrative procedure for the settlement of contract disputes. Where such administrative procedure exists, the aggrieved contractor must first submit his claim to the agency within the period of time specified in his contract, or, if no time is specified, within ninety (90) days after the question or dispute arises. A contractor dissatisfied with a final agency decision concerning the dispute must then bring an action in the district court, as authorized in section 83-601, within one year after the adverse final decision. Where no agency procedure for resolving contract disputes exists, the contractor must bring an action in district court within one year after the cause of action arises.

THEREFORE, IT IS MY OPINION:

Section 83-602, R.C.M. 1947, provides three separate periods of limitation applicable to disputes arising from express contracts with state agencies.

(1) A contractor who fails to submit his claim to an agency having an administrative procedure for resolving contract disputes within the time limits prescribed in the contract or, if no time is specified, within ninety (90) days after the dispute arises, is barred from thereafter submitting his claim to the agency or litigating the question in the district court.

(2) A contractor who timely submits his dispute to an agency having an administrative procedure but who

fails to bring an action in the district court within one year after a final adverse decision by the agency, is barred from thereafter litigating his claim in the district court.

(3) In cases where no settlement procedure is provided by a contracting agency, a simple one year statute of limitations, commencing at the time the cause of action arises, applies.

Very truly yours,

MIKE GREELY
Attorney General