

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 99

CHILD CUSTODY AND SUPPORT - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;

LIMITATIONS ON ACTION - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations;

REVENUE, DEPARTMENT OF - Changing statute of limitations for paternity action by state agency did not revive actions barred under previous statute of limitations; STATUTES - Retroactivity;

MONTANA CODE ANNOTATED - Sections 1-2-109, 40-6-108; MONTANA LAWS OF 1987 - Chapter 129.

HELD: The change by the 1987 Montana Legislature in the statute of limitations for paternity actions initiated by a state agency did not revive actions barred under the previous statute of limitations.

19 July 1988

John D. LaFaver, Director  
Department of Revenue  
Room 455, Mitchell Building  
Helena MT 59620

Dear Mr. LaFaver:

You have requested my opinion concerning a recent legislative change to the statute of limitations governing paternity actions. As amended in 1985,

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section 40-6-108, MCA, provided that a state agency must bring an action to establish paternity within two years of the child's application for services under Title IV-D of the Social Security Act. The effect of this statute was to bar any paternity claims made more than two years after the child's application for services. Prior to 1985 the statute of limitations for paternity actions was three years from the birth of the child.

The change enacted in 1987 by the Montana Legislature allows the state agency to bring an action "at any time" after the child has applied for such services. The prospective effect of the legislative change is clear, but your question relates to the effect of the legislation retroactively. You have posed the following question:

In enacting a new statute of limitations for paternity actions initiated by a state agency, did the Montana Legislature revive causes of action which were barred under the previous statute?

My answer is that there is no revival. The general proposition that an action, once barred, is not revived by subsequent legislation is settled:

Although there is some authority to the contrary ... the great preponderance of authority favors the view that one who has become released from a demand by the operation of the statute of limitations is protected against its revival by a change in the limitation law.

51 Am. Jur. 2d Limitation of Actions § 44 (1970) (footnotes omitted). In a case which was factually similar to your question, the Colorado Supreme Court has held that a paternity action barred by a previous statute of limitations could not be revived by a change in the statute:

When the bar of the statute of limitations has once attached, the legislature cannot revive the action. [Citation omitted.]

Jefferson County Department of Social Services v. D. A. G., 607 P.2d 1004, 1006 (Colo. 1980).

This conclusion is buttressed by the general disfavor toward retroactive application of legislation. Section 1-2-109, MCA, provides:

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No law contained in any of the statutes of Montana is retroactive unless expressly so declared.

I have examined the complete text of chapter 129 of the 1987 Montana Laws, which contains the legislative change in the statute of limitations for paternity actions, and find no legislative expression of retroactive application. The use of the expression "at any time" refers to the period in which the state can bring a legal action and cannot be construed as expressing a legislative intent for retroactive application of the statute. The statutory rule in section 1-2-109, MCA, finally, comports with established common law principles:

In most jurisdictions, in the absence of a clear manifestation of legislative intent to the contrary, statutes of limitation are construed as prospective and not retrospective in their operation, and the presumption is against any intent on the part of the legislature to make such a statute retroactive.

51 Am. Jur. 2d Limitation of Actions § 57 (footnote omitted).

THEREFORE, IT IS MY OPINION:

The change by the 1987 Montana Legislature in the statute of limitations for paternity actions initiated by a state agency did not revive actions barred under the previous statute of limitations.

Very truly yours,

MIKE GREELY  
Attorney General