

ROAD DISTRICTS:-Whether bond of district is barred by Statute of Limitations depends upon whether or not person holding bond is under disability, as provided in Section 868, R. S. Mo. 1929.

1-22
January 17, 1934.



Hon. James H. Russell, Senator,
17th Senatorial District,
Jefferson City, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"I respectfully request an opinion from your office on 'Grand River Township Compromise Interest Bond No. 80 of Cass County, Missouri,' as shown by facts set out in a letter, which you will find attached, from Frank H. Davidson, County Clerk of Cass County.

Does the Statute of Limitations hold against the payment of this bond?

Is there a legal way for this money to be released as suggested by the letter attached from Mr. Davidson?"

Attached to your letter is a statement from Mr. Frank H. Davidson of Harrisonville, Missouri to the effect that in 1887 the Grand River Township in Cass County, Missouri issued some 20/30 years 5% bonds. It appears that the bonds were called for payment on February 10, 1913, and payment of interest was ceased March 16, 1913. There is outstanding Bond No. 80 in the amount of \$1500.00 and there is in the treasury to the credit of the fund for the payment of this bond the sum of \$1500.00. You desire an opinion as to whether this bond has been barred by the Statute of Limitations, and if not, what disposition should be made of the \$1500.00 held to take up the bond.

Section 861, R. S. Mo. 1929, provides as follows:

"Within ten years: First, an action upon any writing, whether sealed or unsealed, for the payment of money or property; second, actions brought on any covenant of warranty contained in any deed of conveyance of land shall be brought within ten years next after there shall have been a final decision against the title

of the covenantor in such deed, and actions on any covenant of seizin contained in any such deed shall be brought within ten years after the cause of such action shall accrue; third, actions for relief, not herein otherwise provided for."

Under the foregoing section, an action upon any writing, whether sealed or unsealed, shall be brought within ten years. We do not have a copy of this issue of bonds but the bond is a 20/30 year bond, which we interpret to mean is callable within 20 years and due in 30 years. Being due in 30 years from date of issue, it would be due 30 years from 1887, or in 1917. There being no interest payments since that time so as to toll the Statute of Limitations, the Statute of Limitations would run, providing the bond is not in the hands of a person suffering a disability. Section 868, R. S. Mo, 1929, defining persons under disability, provides as follows:

"If any person entitled to bring an action in this article specified, at the time the cause of action accrued be either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution under a sentence of a criminal court for a less term than his natural life, or a married woman, such persons shall be at liberty to bring such actions within the respective times in this article limited after such disability is removed."

Under Section 868, if the cause of action accrued while the holder was under twenty-one years of age, insane, imprisoned on a criminal charge, or under sentence for a less term than his natural life, or a married woman, such persons shall have ten years after such disability has been removed in order to bring a suit upon the bond. Since it is possible that the bond is in the hands of some person suffering a disability, as provided in Section 868, we are of the opinion that the Road District would have no right to transfer the \$1500.00 from the bond fund to the general fund of the District.

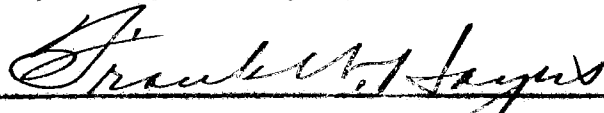
Apparently it is unknown who owns Bond No. 80. If it can be developed that the present holder of the bond is not in one of the classes of persons as mentioned in Section 868, then we believe that the bond is barred by the Statute of Limitations, and that the \$1500.00 fund might be transferred to the general fund of the District. On the contrary, if the holder of the bond should turn out to be one of the class of persons mentioned in Section 868, then the Statute of Limitations might not have run as yet and may not run for several years, and in such an event the District would have no right to transfer the \$1500.00 from the bond fund to the general fund of the District.

It is therefore the opinion of this Department that

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whether or not the bond in question is barred by the Statute of Limitations depends on whether or not it is held by the classes of persons as set out in Section 868. If not so held, the bond, in our opinion, is barred. If so held, it may or may not be barred, depending upon the facts, but in the absence of an affirmative showing that the bond is held by a person other than those mentioned in Section 868, we cannot rule that said bond is barred by the Statute of Limitations. Unless the bond is barred by the Statute of Limitations according to the facts as they exist, then the District would have no right to transfer the \$1500.00 in question.

Very truly yours,



Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S