

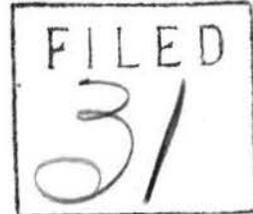
COUNTY WARRANTS: Under section 12173, after lapse of five years county warrants may not be paid.

---

October 7, 1939

10-14

Hon. C. G. Fremon  
Presiding Judge  
County Court  
Schuyler County  
Lancaster, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated October 3rd, 1939, which reads as follows:

"An opinion of your department on the following matter is hereby requested.

"The evidence offered in support of a written application filed before us establishes that during the year of 1919 one William H. Lansdale served as road overseer in Road District # 26 in this County. In that year, in payment of services duly rendered by him, the bill for which was duly allowed, the County Court of this county issued to him a warrant in due form for the sum of \$100.00. It appears that at that time the fund against which the warrant was drawn was short, and the members of the Court orally requested Mr. Lansdale to hold up the warrant for a short time until that fund was replenished. The request was made at the time the warrant was drawn and delivered to Mr. Lansdale, and he agreed to it. It further appears that he took the warrant home without presenting it for payment, but after having duly endorsed it, and laid it away among his papers where it was forgotten.

"A few weeks ago Mr. William H. Lansdale died.

His son and heir-at-law has presented to us for payment that old, original warrant, properly endorsed as aforesaid. With it the son has filed the aforementioned application, in which he freely admits that collection of the warrant is barred by operation of the Statutes of Limitation, but in which he asserts that the debt was lawfully incurred, and that payment thereof has never been made.

"We are satisfied with the proof to the effect that the warrant was regularly issued for a lawful debt which has never been paid, and which, morally at least, constitutes an obligation against this County. We are disposed to make payment in full of the warrant, provided we can lawfully waive the defense of limitations which is available to us in this case without incurring any liability by reason of such waiver.

"We might also point out that Road District #26 has since, by proper steps, been consolidated with several other districts in this county into a new district now known as district # 25. Of course no funds remain to the credit of the old district # 26

"We desire your opinion on these two questions which are presented by the above statement of facts:

"1st: Can this Court waive the defense of limitations now available to us, and lawfully make a voluntary payment of the 1919 warrant at this late date, without incurring any legal liability therefor?

"2nd: If payment can lawfully be made at this date, out of what funds shall it be made?

Section 12173 R. S. Mo., 1929, reads as follows:

"Whenever any warrant drawn on any county treasur-

er shall have remained in the possession of the county clerk for five years, unclaimed or not called for by the person in whose favor it shall have been drawn, or his or her legal representatives, the county court shall, by proper order, entered of record, annul and cancel the same; and whenever any such warrant, being delivered, shall not be presented to the county treasurer for payment within five years after the date thereof, or, being presented within that time and protested for want of funds to pay it, shall not be again presented for payment within five years after funds shall have been set apart for the payment thereof, such warrant shall be barred and shall not be paid, nor shall it be received in payment of any taxes or other dues."

In *Wilson v. Knox County*, 34 S. W. 45, 132 Mo. 387 it was held that the provision of Revised Statutes, 1889, Section 3195 (now Section 12173 R. S. Mo., 1929), that a county warrant that shall not be presented within five years, or, having been presented and not paid for want of funds, shall not be again presented for five years, shall be barred, is a limitation of actions on warrants, as well as a direction to the county officers, and governs such actions, to the exclusion of the general statute of limitations. But Section 12173, supra, goes further than that. By its provisions, the action is not only barred, but also the debt. Notice the term used in that section, "and shall not be paid". The foregoing term is mandatory, not directory.

In *State ex rel Stevens v. Wurdeman*, 246 S. W. 189, 295 Mo. 566, it is said:

"Usually the word 'shall' indicates a mandate, and, unless there are other things in a statute, it indicates a mandatory statute."

Hon. C. G. Fremon

(4)

October 7, 1939

CONCLUSION

Following from the above, it is the opinion of this Department that these twenty year old warrants cannot be paid. The answer in the negative to the first question disposes of the second.

Respectfully submitted,

W. J. BURKE  
Assistant Attorney-General

RPCW:RW

APPROVED:

---

TYRE W. BURTON  
(Acting) Attorney-General.