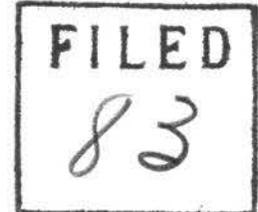


BONDS: The ten year statute of limitation is applicable to drainage district bonds.

August 27, 1942

Honorable Alvin Smyth, Treasurer
and Ex-Officio Collector
Stoddard County
Bloomfield, Missouri



Dear Mr. Smyth:

This is to acknowledge receipt of your letter of August 19th, 1942, in which you request the opinion of this department. Your letter is as follows:

"I am writing you relative to some information about paying a bond drawn on drainage district No. 17 Old.

"This bond was presented here at my office for payment and I have thus far refused payment on the grounds that the bond is over ten years old. This bond was issued on June 1, 1915 and was due June 1, 1931. There has been no payment of any sort on this bond.

"I would like to know if this bond is outlawed or should I go ahead and pay this bond."

The question as we interpret your letter is whether or not the statute of limitations has run against the drainage bond mentioned in your letter, which you say was executed June 1st, 1915, and was due June 1st, 1931. It will be observed that the bond has been due more than eleven years.

Sections 1012 and 1013, R. S. Mo. 1939 (R.S.A. Vol. 4, pp. 131 and 153), provide in part as follows:

Section 1012:

"Civil actions, other than those for the recovery of real property, can only be commenced within the periods prescribed in the following sections, after the causes of action shall have accrued: * * * * *

Section 1013:

"Within ten years: First, an action upon any writing, whether sealed or unsealed, for the payment of money or property; * * * * *

The question then to be determined is whether or not bonds issued by drainage districts and the bond in question, come within the provisions of the ten year statute of limitations.

We do not think there is any question but that the bond issued by the district comes within the terms of a sealed writing for the payment of money or property, as used in Section 1013, supra. There is a scarcity of cases reported bearing on the question of a municipal corporation pleading the statute of limitations in cases involving bond issues.

The general rule is stated in Jones, Bonds and Bond Securities, Vol. 1, 4th Ed., Sec. 510:

"The statute of limitations is available to a municipal corporation as a defense to an action to obtain judgment against it upon its bonds or the interest coupons originally attached thereto. The applicable limitation is that prescribed by the statutes of the State wherein the particular municipality is located, for there is where the remedy must be solved."

The United States Supreme Court, in the case of Clark v. Iowa City, 22 Law Ed. 427, 87 U. S. 583, recognized the application of the statute of limitations to bond issues by a municipality, and said the following with reference to same:

"The case of Lexington v. Butler (14 Wall. 282, 20 L. ed. 809) arose in Kentucky, where the statute prescribes fifteen years as the limitation for actions on bonds, and only five years for actions on simple contracts. The action was upon coupons of certain bonds issued by the city, and the city pleaded the Statute of Limitations of five years, but the court answered that bonds were specialties not falling within the period prescribed; that suits on bonds might be maintained if commenced within fifteen years after the cause of action accrued, and that a suit upon a coupon was not barred by the statute unless the lapse of time was sufficient to bar also a suit upon the bond, as the coupon, if in the usual form, was but a repetition of the bond in respect to the interest for the period of time therein mentioned, and partook of its nature."

(22 Law Ed. 1. c. 429.)

And, also, in the case of Curtis, et al. v. Rialto Irr. Dist., 187 Pac. 117, 1. c. 118, the Court had this to say, citing many cases supporting its statement:

"In the absence of any provision to the contrary, each bond and each coupon is a distinct obligation; and the rule is--and we think it supported

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by reason as well as by overwhelming authority - that the statute of limitations begins to run when the right of action is complete. As already intimated, it would be a strange contention, and, as we see it, an illogical conclusion, to hold that the statute sleeps with respect to bonds or coupons, detached of otherwise, whilst a complete right of action upon such claims exists in the holder. * * * * *

From the above and foregoing we think that the ten year statute of limitation of Missouri is applicable to the drainage bond mentioned in your letter, unless there is some peculiar circumstance with relation to the drainage bond in question which would toll the statute of limitations.

CONCLUSION

It is, therefore, our opinion that if suit was not instituted on the bond in question within ten years after the cause of action accrued, that is, within ten years from June 1, 1931, that in the event that suit is brought by the owner on the bond in question the drainage district could plead the statute of limitation as a bar to the action on the bond and the plea would be sustained.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

CRH:CP