COUNTY WARRANTS: Limitations are governed by the provisions of Section 12173, R. S. Mo. 1929.

September 28, 1939

FILED
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Mr. Omer Casey
County Treasurer
Stockton, Missouri

Dear Sir:

This will acknowledge receipt of your letter of September 15, asking our opinion on the following questions:

(1) Do limitations run on county warrants and, if so, when?

(2) May county road district warrants be registered and protested so as to thereafter draw interest until paid?

(3) Who is liable for warrants issued in excess of the anticipated revenue?

Section 12173, R. S. Mo. 1929 provides:

"Whenever any warrant drawn on any county treasurer 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."

The court in the case of Wilson vs. Knox County 132 Mo. l.c. 394, in speaking of the application of the above quoted section said:

> "Counsel for respondent contend that section 3195 does not provide a limitation to actions upon county warrants, but insist that the provisions thereof, last quoted, were intended merely for the guidance of the county officers, and to place limitations upon these agents of the county as to the payment of such warrants. That the section does contain such directions and limitations in the provision 'that any such warrant * * * shall not be paid, nor shall it be received in payment of any taxes or other dues' is beyond question; and excellent reasons are given why these restrictions upon county officers were and ought to have been embodied in the statute. But in the forefront of these limitations there stands another, of which this contention takes no account, i.e., 'that such warrant shall be barred.' What is to be done with this limitation? It can not apply to the county officers upon whom the intended restrictions are made full and complete by the prohibition that the warrant shall not be paid or received in payment for any taxes or other dues. It can not be ignored or dropped from the

> statute, and must apply according to its terms to every county warrant, of the class in question. How can the application of those terms to such warrants be made, except by barring an action thereon?
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> The word 'bar' 'has a peculiar and appropriate meaning in law.' 'In a legal sense it is a plea or peremptory exception of a defendant sufficient to destroy the plaintiff's action.' 1 Jacob's Law Dict., 289; 1 Abbott's Law Dict., 125. 'A special plea constituting a sufficient answer to an action at law and so-called because it barred, i.e., prevented, the plaintiff from further prosecuting it with effect, and if established by proof defeated and destroyed the action altogether.' 1 Burrill's Law Dict., 185.
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> The word 'barred' must be held to have been used in this section in its well defined technical sense. R. S. 1889, sec. 6570. It necessarily implies an action to be 'barred,' defeated, or destroyed, and the meaning of the phrase 'such warrant shall be barred' is just as plain and unmistakable as if the phrase had been written 'action on such warrant shall be barred.'"

It is clear, upon reading the above statute and quoted excerpt from the Wilson case, that any action to collect a county warrant is barred that is commenced more than five years after the date of said warrant, unless said warrant has been presented to the treasurer for payment within five years of the date; and also that an action to force collection of a protested warrant is barred, if said warrant is not presented for payment to the county treasurer within five years after funds have been set aside for its payment.

In answer to your second question, we enclose copies of opinions rendered to Honorable Randolph H. Weber, Prosecu-

ting Attorney of Butler County, on November 10, 1937, and January 11, 1938, holding that county road district warrants may be issued and registered up to the amount of the anticipated revenue and that said warrants, upon being properly protested, draw interest at 6% per annum.

We take your third question to ask who is liable to the holder of a warrant issued in excess of the anticipated revenue for that year. It is well settled in this state that a warrant so issued is void and the county is not liable therefor. State ex rel vs. Hackman 280 Mo. 686, Trask vs. Livingston County, 210 Mo. 582, Watson vs. Kerr 279 S. W. 692.

Concerning the liability of the body that issued said warrant in excess of the anticipated revenue as private individuals, we will say that our research has disclosed no decided case by the courts of this state that would seem to conclusively settle the question. It appears from the knowledge we have of the facts that any controversy on this point would concern only the holder of such a warrant, and the members of the body that ordered it issued as private individuals. This being the situation, it is not our duty to attempt to prejudge these private individuals private liability. However, we refer you to some authority which is indicative of the attitude of the courts on this question. See: Jacquemin vs. Andrews 40 Mo. App. 507; 87 A.L.R. 273 notes.

As to your own responsibility on this subject, we enclose an opinion rendered to Maurice Dwyer dated January 13, 1936.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General
LLB:RT
Enc.