COUNTIES: Statute of limitations operates against the county.

April 1, 1943.

4-5

FILED
48

Honorable John H. Keith
Prosecuting Attorney
Iron County
Ironton, Missouri

Dear Mr. Keith:

The Attorney-General wishes to acknowledge receipt of your letter of March 31st in which you request an opinion of this Department. This request, omitting caption and signature, is as follows:

"In Re: INSANE PERSON: No. 48-43

"Your assistant, Mr. John S. Phillips wrote the above opinion on statement of facts contained in my request on 2-4-43, which was approved by you.

"I have filed a demand against the estate of Ida Belle Simms, the insane person concerning whom I wrote you for the above opinion, based on the amount paid out by Iron County since she became a patient in Hospital No. 4, July 12, 1928.

"The guardian has filed an answer wherein he pleads the Five Year statute of limitations as a bar.

"As I explained in my letter requesting your opinion above mentioned I made it clear I think that she recently became possessed of an estate which

> is the proceeds of and from sale of land held by her and her deceased husband by the entirety, and prior to that time she had no estate whereby the county could obtain payment. I enclose copy of answer of guardian, and would appreciate your opinion as to whether or not the five year statute of limitations applies, as it will be helpful with the probate court. See Barry Co. v. Glass, 160 S. W. (2d) 808."

The question involved in this opinion request seems to be whether the five-year statute of limitations operates against a county.

My understanding of the facts is that the insane person in question was placed in the hospital in 1926 and later released, and in July, 1928, she was again found insane by the court and ordered returned to the hospital at Farmington where she has remained ever since. Subsequently, she came into the possession of certain property, and the county is now attempting to collect the amount expended for her keep for 1928 until the present time.

If the statute of limitations operates against a county, of course the county can only recover the amount expended five years previous to the filing of the claim. Otherwise, they would be permitted under the law to be reimbursed for the entire amount expended since 1928. The old common-law rule that limitations did not run against the sovereignty, has been revoked by the decisions in numerous jurisdictions, and in this State the courts have held that the limitations of actions operate against a county.

I first wish to cite you to the case of St. Charles County v. Powell, 22 Mo. 525, 66 Am. Dec. 637, in which the prerogative recognized at common law, that the lapse of time will not bar the right of the King, was renounced and the

court held that the statutes of limitation run against a county the same as an individual even though a county be considered as having the attribute of sovereignty.

Again, in the case of Nall v. Conover, 122 S. W. 1039, 223 Mo. 477, the court held that the limitations run against a county. And again, in the latest case which seems to pass on this subject, namely, Emery et al. v. Holt County et al., 132 S. W. (2d) 970, 345 Mo. 223, the court held that the maxim, "nullum tempus occurrit regi," did not apply to the political subdivisions of the State and only applied to the State itself. See cases cited in this opinion. This decision written by Gantt, J., further stated that the maxim cited above was abolished at an early date in this State.

Following the decisions cited above and the rulings given by the court in such cases, we are of the opinion that the statute of limitations as set out in Section 1014, R. S. Mo. 1939, will run against Iron County in the collection of any money expended by it for the upkeep of the insane individual and that therefore the county can only recover the amount expended for a period of five years previous to the date of the filing of such claim in the probate court.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

JSP:EG