

Opinion No. 47-5019

May 6, 1947

BY: C. C. McCULLOH, Attorney General

TO: C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*42} In your letter of May 1, 1947, you request the opinion of this office as to whether the statute of limitations applies to the state in an action to recover on an official bond.

Section 27-107, New Mexico Statutes 1941 Compilation, provides as follows:

"Those against sureties on official bonds and on bonds of guardians, executors, administrators and persons acting in a fiduciary capacity, within two (2) years after the liability of the principal or the person for whom they are sureties, shall have been finally established or determined by a judgment or decree of the court and those {*43} brought against any county or state officer for or on account of any liability incurred in the doing of any act in an official capacity or by the omission of any official duty and for an injury to the person or reputation of any person, within three years."

This is a section of the General Limitation Act which also provides, in Section 27-118, 1941 Compilation, that the General Limitations are applicable to actions brought by or against all bodies corporate or politic except when otherwise expressly declared. In the case of *State v. Roy*, 41 N.M. 308 the Supreme Court of New Mexico held that the above limitations do not apply to an action brought by the state for funds belonging to the state, since the state is not expressly mentioned in the statute. See also *Haggerman v. Territory*, 11 N.M. 156; also opinion by this office, Page 67 of the 1925-26 report.

In view of the above statutes and case law, I am of the opinion that the statute of limitations does not apply to the state in an action to recover on an official bond.

By WM. R. FEDERICI,

Asst. Atty. General