

**Opinion No. 26-3899**

July 2, 1926

**BY:** ROBERT C. DOW, Assistant Attorney General

**TO:** Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

This Office is in receipt of your request for an opinion relative to claims against the principal and sureties on official bonds wherein you desire to know how long such claims may run before they are barred by the statute of limitations. § 3350 of the Laws of 1915 is as follows:

"Those against sureties on official bonds and on bonds of guardians, executors, administrators and persons acting in a fiduciary capacity, within two 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 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."

And § 3361 of the Laws of 1915 is as follows:

"The above limitations and provisions shall not apply to evidences of debt intended to circulate as money; but shall, in other respects, be applicable in all other actions brought by or against all bodies corporate or politic, except when other-wise expressly declared."

It has been held in New Mexico that the statute of limitations does not run against the State; our law on limitations was taken from the statutes of Iowa and a construction has been placed upon a statute of that State which is worded identically with § 3361 of our statute, the same having been decided in the case of County of Des Moines v. Harker, 34 Iowa 84. The court held in this case that "bodies politic and corporate" does not include the state, and this being a well decided case directly in point, I am of the opinion that § 3350 of our statute as above set forth would not preclude the State or any subdivisions or agencies thereof from maintaining actions against the principal and sureties on official bonds in New Mexico.