

December 4, 1956 (OPINION)

COUNTIES

RE: Claim Against an Estate - Statute of Limitations

We have received your request for an opinion dated november 28, 1956, on the following problem.

Lamoure County has filed a claim against the estate of Gottlieb Fregien who was a patient at the State Hospital at Jamestown from 1933 until his death in 1955. The total claim of the county amounts to \$8,230.00. The inventory of the property fails to show the value of the estate which consists of real estate only but an offer of compromise at fifty percent of the total claim has been made to the Board of County Commissioners of LaMoure County.

Under the above stated facts your questions are as follows:

1. Does the Board of County Commissioners have the authority to compromise claims of this kind when a compromise would take away money due the State Charitable Institution Fund?

We do not know of any law authorizing a county to compromise claims of this nature. Generally speaking, no public corporation in the absence of statutory authority can compromise a claim unless there is some good sound basis for such compromise. Here we understand is a solvent estate with enough assets to pay the claim in full. Under such circumstances there can be no room for compromise.

Question number two: Does the statute of limitations apply against all moneys expended on behalf of the decedent prior to July 1, 1943 or would such act be in the nature of an open account?

Section 25-0825 of the 1953 Supplement provides that a claim for expenses incurred by a county or the state for institutional care may be filed against the estate of such patient after his death in the same manner as claims of general creditors, or may be recovered from the patient after he is discharged from the institution as cured. Obviously, the right to file a claim does not accrue until the patient either dies or leaves the institution and the statute of limitations does not start to run until such time. Section 25-0828 which provides that the statute of limitations is not a bar to recovery and was enacted in 1949, refers only to cases where the six year period had run on a claim prior to the effective date of that statute.

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