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Opinion No. 86-179

February 2, 1987

Honorable John W. Parkerson
State Representative
520 Ouachita Avenue
Hot Springs, Arkansas 71901

Dear Representative Parkerson:

You have requested an Attorney General's opinion on the following issue:

Is there a statute of limitations which applies to the collection of forfeited bail bonds in Municipal Court in Arkansas?

The Arkansas statutes concerning bail are codified at Ark. Stat. Ann. §43-701 et seq. (Repl. 1977 and Supp. 1985). Ark. Stat. Ann. §43-723 and §§43-725 through 43-727 provide as follows:

43-723. Forfeiture of bail -- When taken.-- If the defendant fail [fails] to appear for trial or judgment, or at any other time when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court may direct the fact to be entered on the minutes, and thereupon the bail-bond, or the money deposited in lieu of bail, is forfeited.

43-725. Duty of prosecuting attorney.
-- If the forfeiture is not discharged the prosecuting attorney for the circuit may, at any time after the adjournment of the court, proceed by action against the bail on their bond.

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43-726. Action. -- The action on the bail-bond shall be in the court in which the defendant was, or would have been, required to appear for trial.

43-727. Procedure. -- No pleadings are required on the part of the State but the clerk shall issue a summons against the bail requiring them to appear within 20 days, to show cause why judgment could not be rendered against them for the sum specified in the bail-bond, on account of the forfeiture thereof; which summons shall be executed as in civil actions and the action proceed as an ordinary civil action.

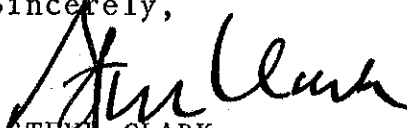
The provisions outlined above establish the procedure for the forfeiture of bail bonds and for obtaining a judgment against the bail bond. However, none of these provisions establishes a limitation of action on obtaining a judgment against a forfeited bond.

Although there are no Arkansas cases establishing a statute of limitations and there is no statute which specifically establishes a limitation of action for the recovery of a forfeited bail bond, it is clear from the statutes quoted above that the collection of a forfeited bail bond is an action against the bail bond itself. I interpret this to mean that the action to recover the forfeited bail bond is an action pursuant to the written contract. Ark. Stat. Ann. §37-209 (Repl. 1962) establishes a five year limitation of action on written contracts.

Therefore, it is my opinion that the five year statute limitations provided for in Ark. Stat. Ann. §37-209 applies to the collection of forfeited bail bonds in Municipal Court.

This opinion, which I hereby approve, was prepared by Assistant Attorney Jack Gillean.

Sincerely,



STEVE CLARK

Attorney General

SC:JG:ble