

July 21, 1937

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ARIZONA ATTORNEY GENERAL

Mr. Raymond W. Starr  
Attorney General of State of Michigan  
Lansing, Michigan

Attention: Mr. T. George Sternberg  
Assistant Attorney General

Dear Sir:

We have your request of July 13th for information relative to the law of this state pertaining to limitation of actions for enforcement of stockholders' liability arising under the statutes of the State of Michigan against stockholders in Michigan banks, resident in this state.

Our statute of limitations, insofar as we believe the same applicable, is as follows:

Section 2058, Revised Code of Arizona, 1928, provides a limitation of one year upon a liability created by statute, other than a penalty or forfeiture.

Section 2072, R.C.A. 1928, provides as follows:

"No action shall be maintained against a person removing to this state from another state or foreign country to recover a claim which was barred by the law of limitations of that state or country from which he migrated; nor shall an action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the state or country from which he migrated."

Section 2074, R.C.A. 1928, provides as follows:

"No demand against a person who may remove to this state, incurred prior to his removal, shall be barred by the statute of limitation until he has resided in this state one year, unless barred at the time of his removal to this state by the laws of the state or country from which he migrated."

The Supreme Court of this state, in the case of Cowden v. Williams, 259 Pac. 670, 55 A.L.R. 1059, held that an action for enforcing a stockholder's liability arising under the constitution and laws of this state, is such an action as comes within the provisions of Section 2058 above quoted; that is, that it is governed by the one-year statute of limitations and that the period of limitation commences to run from the date there is a judicial determination that recourse will be necessary to the stockholders in order that the creditors of the defunct banking institution may be satisfied. As will be seen from a reading of this case, the court based its decision upon our constitutional and statutory provisions and held that under the provisions therein quoted, the stockholder's liability was secondary, and, upon such holding, concluded that the period began to run from the date of the judicial determination of necessity for holding the stockholders.

It occurs to us that under the general rule referred to in 37 Corpus Juris, pages 732-733, Paragraph 51, that our period of limitation would govern; that is, the action must be instituted within the one-year period, unless under your statutes or constitutional provisions the liability of the stockholder which is therein set up is combined with a limitation upon such liability, in which event we take it that your statute might govern. We are, of course, not familiar with your statutes or constitutional provisions.

We trust that this answers your inquiry. In the event we can be of further assistance to you, please feel free to call on us.

Yours very truly,

JOE CONWAY  
Attorney General

MARK WILMER  
Assistant Attorney General

E. G. FRAZIER  
Special Assistant  
Attorney General

MW:AC