

**OPINION
72-94**

May 15, 1972 (OPINION)

Mr. Wayne P. Jones

Assistant States Attorney

Ransom County

RE: Counties - County Judge - Records

This is in response to your letter in which you state that the County Judge of Ransom County has made inquiry as to the keeping of certain records. You further state that you have researched the question, but are unable to find an answer for him. You call to our attention Chapter 301 of the 1971 Session Laws which among other things repeals section 27-07-32 of the North Dakota Century Code. You then ask for an opinion whether or not the repeal of the aforementioned section has made it unnecessary for the county judge to file certain records.

Chapter 301 of the 1971 Session Laws amended section 27-07-28 and reenacted same by deleting the reference to section 27-07-32 which was specifically repealed by section 5 of chapter 301. In this respect, the Act is consistent.

Chapter 301 amended and reenacted section 27-07-36 which reads as follows:

RECORDS OF COURT TO BE KEPT BY JUDGE - RECORDS OPEN TO PUBLIC INSPECTION. The judge of each county court shall safely keep the records of such court and all documents and other papers lawfully entrusted to him by virtue of his office or in the course of any proceeding before him. At proper times, he shall deliver the same to the person entitled thereto or to his successor in office. The records of the court shall be open to inspection during office hours by persons having business therewith. The county judge may destroy the following records:

1. All papers contained in marriage files, except the original marriage license, if the license is at least five years old.
2. All mental health or insanity files more than twenty years old as determined by the date of the last paper filed. However, no patient's file shall be destroyed unless he has been dead six years. The judge's investigation shall determine if the patient is alive or his date of death. The clerk of court shall record the destruction and destruction date in the file's index.
3. All receipts, canceled checks, or vouchers filed in support of any report and account rendered by any executor, administrator, or guardian if the filing date of the report and account is at least six years old. When these are destroyed, the clerk of court shall make a record of the

destruction and the destruction date in the margin or elsewhere on the report and account affected."

This section provides that the county court is to keep the records of such court and all documents or other papers lawfully entrusted to him by virtue of his office. This would include substantially all of the records referred to in section 27-07-32. The same section then continues by adding the type of records which may be destroyed under subsection numbers 1, 2, and 3. The obvious inference is that where the Legislature has designated certain records which may be destroyed, those not mentioned must be kept.

While the repeal of section 27-07-32 may no longer require the transcription into record books of certain orders and decrees, but because of the provisions of section 27-07-36 such records must still be kept.

It is therefore our opinion that the county court must keep all records and documents and other papers which are lawfully entrusted to him or are developed in the course of any proceedings before such court. It is our further opinion that the county judge may destroy after the lapse of time mentioned, those documents enumerated in subsections 1, 2, and 3 of section 27-07-36 as amended. The obvious inference is that all records, until the legislature provides otherwise, are to be kept.

HELGI JOHANNESON

Attorney General