

July 27, 1959 (OPINION)

PRINTING LAWS

RE: Distribution of Public Documents - Destruction of Public Records
Receipts and Handgun Permits

This is in reply to your letter of July 21, 1959, in which you ask the following questions:

Under Chapter 41-18 of the 1957 Supplement to the 1943 Revised Code. Uniform Trust Receipt Act. An agreement between trustor and the trustee which is called a trust receipt is filed in our office and we wonder how long we have to keep that instrument on file until we are authorized to destroy it.

Chapter 62-01, Possession, Sale and Use of Pistols and Revolvers, under section 62-0108. Carrying permits are filed with the Secretary of State and thereto we would appreciate your opinion on how long we have to keep them on file until we can destroy them."

Section 46-0420 of the 1957 Supplement to the North Dakota Revised Code of 1943 provides as follows:

DESTRUCTION OF PUBLIC RECORDS. Whenever necessary to obtain needed vault space, the chief executive officer of any state department, agency, board, bureau or commission having offices in the capitol building or the liberty memorial building may destroy all unnecessary records, documents, and correspondence more than fifteen years old, excepting such documents which might be or become valuable as historical records or documents; provided that no document, record or correspondence shall be destroyed which might be evidence in any civil or criminal action or proceedings until the statute of limitations applicable thereto shall bar such action or proceeding in which such document or record might be evidence." (Emphasis supplied).

It is obvious under the above quoted statute that records are to be kept for a minimum of fifteen years unless they have value as historical documents or might be used as evidence in a civil or criminal action or proceeding in which case they are to be retained until the statute of limitations shall bar such action or proceeding. The statute of limitations applicable to trust receipts would appear to be governed by section 28-0116 of the North Dakota Revised Code of 1943 which provides a six-year limitation. However, the following provisions in chapter 28-01 are also applicable:

28-0124. CAUSES OF ACTION FRAUDULENTLY CONCEALED BY PERSON LIABLE, EXTENSION OR LIMITATIONS ON. When, by fraud or fraudulent concealment, a party against whom a cause of action exists prevents the person in whose favor such cause of action exists from obtaining knowledge thereof, the latter may

commence an action within one year from the time the cause of action is discovered by him or might have been discovered by him in the exercise of diligence. Such fraud or fraudulent concealment must be established to the satisfaction of the court or jury, as the case may be, by a fair preponderance of the evidence."

28-0132. ABSENCE FROM STATE TOLLS LIMITATIONS; EXCEPTION. If any person shall be out of this state at the time a cause of action accrues against him an action on such cause of action may be commenced in this state at any time within the term limited in this chapter for the bringing of an action on such cause of action after the return of such person into this state. If any person shall depart from and reside out of this state and remain continuously absent therefrom for the space of one year or more after a cause of action shall have accrued against him, the time of his absence shall not be taken as any part of the time limited for the commencement of an action on such cause of action. The provisions of this section, however, shall not apply to the foreclosure of real estate mortgages by action or otherwise."

Section 28-0125 of the North Dakota Revised Code of 1943 provides that certain disabilities which are present at the time the cause of action accrues will extend the period of limitation and is also applicable in this case. The period of such extension is limited to an additional five years except in the case of infancy.

It will be noted that while the basic statute of limitations is six years that such period may be extended almost indefinitely under the above cited statutes. It is therefore not possible to state that the document, in this case a trust receipt, will not be needed as evidence in an action or proceeding after a period of fifteen years. By the same reasoning it is not possible to state a definite period of years after which such instrument may be destroyed.

Insofar as the carrying permits for pistols are concerned, section 62-0120 of the North Dakota Revised Code of 1943 provides that a person violating the provisions of chapter 62-01, which in part requires a permit to carry a pistol, is guilty of a felony. Section 29-0402 of the North Dakota Revised Code of 1943 provides that prosecution for a felony other than murder must be commenced within three years after the commission of the felony. Section 29-0404 is pertinent to this matter and provides as follows:

TIME OF DEFENDANT'S ABSENCE NOT PART OF LIMITATION. If, when a crime or public offense is committed, the defendant is out of the state, or if he is within the state and subsequently leaves the state, the information may be filed, or the indictment found, within the time herein limited, after his returning to the state. No time during which the defendant is not an inhabitant of, or usually resident within, this state, is part of the limitation."

In this instance the above quoted statute has the effect of extending the period of limitation within which a criminal action may be brought for an indefinite period. Therefore, in this situation, as

in the case of the trust receipts, it is not possible to state a definite period of years after which such instrument may be destroyed.

We are sorry that we cannot give you a definite answer in response to your questions. However, the law as explained above is of such a nature that we cannot ascertain the period of time during which records must be retained. It appears that the only method by which such period of time may be ascertained is by specific legislative action.

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