

**OPINION
59-235**

July 6, 1959 (OPINION)

PROPERTY

RE: Trademarks - Record of

This is in reply to your letter of June 26, 1959, concerning the recording of corporate, cooperative and trademark instruments.

In your letter you state that under corporation, cooperative and trademark statutes in effect prior to July 1, 1957, and partially in effect until July 1, 1959, your office has recorded all corporate, cooperative and trademark documents. This has entailed the typing, verbatim, in a book designated for such purpose, the entire document and the proofreading of the same.

You wish to know if, under the North Dakota Corporation Act and the North Dakota Trademark Act, both enacted in 1957 and in full force and effect for all pertinent records after July 1, 1959, your office must continue to record the instruments as set forth above or must merely file the instruments in your office.

The pertinent statutes, before adoption of the corporation act in 1957, are as follows:

Section 10-0209 of the North Dakota Revised Code of 1943 which provides in part that:

"Upon the filing of any articles of incorporation, the secretary of state shall cause the same to be recorded, with the date of filing, in a book to be kept in his office for that purpose called the 'book of corporations.'";

Section 10-0211(5) which provides that a certificate of amendment of the articles of incorporation must be filed in the office of the secretary of state and there recorded in the book of corporations;

Section 10-0211(5) which provides that a certificate of amendment of the articles of incorporation must be filed in the office of the secretary of state and there recorded in the book of corporations;

Section 10-1503 which provides that article of incorporation of a cooperative association must be filed and recorded with the secretary of state;

Section 10-1506 which provides that certificates of amendment of articles of incorporation of a cooperative association must be filed and recorded in the office of the secretary of state;

Section 47-2204 which provides that application for a trademark must be recorded in a book to be provided and kept for that

purpose by the secretary of state; and

Section 54-0902(4) which provides that the secretary of state shall record in proper books all conveyances made to the state and all articles of incorporation filed in his office.

Under the Business Corporation Act and the new Trademark Act adopted in 1957, and which after July 1, 1959 repeals in full the old corporation and trademark acts, the following sections are pertinent:

Section 10-1954 of the 1957 Supplement to the North Dakota Revised Code of 1943 which provides in part that the secretary of state shall file a duplicate original of the articles of incorporation in his office;

Section 10-1962 which provides in part that the secretary of state shall file a duplicate original of the articles of amendment in his office;

Section 10-1964 which provides in part that the secretary of state shall file a duplicate original of the restated articles of incorporation in his office;

Section 10-1966 which provides in part that the secretary of state shall file a duplicate original of the certificate of amendment to the restated articles of incorporation in his office;

Section 10-1507 which provides in part that duplicate originals of the articles of association of a cooperative association shall be delivered to the secretary of state for filing and recording;

Section 10-1538 which provides in part that an amendment to the articles of association mentioned in section 10-1507 shall be filed and recorded in the office of the secretary of state;

Section 10-1553 of the 1957 Supplement to the North Dakota Revised Code of 1943 which provides in part as follows:

1. When any document is to be filed and recorded, duplicate originals shall be delivered to the secretary of state. He shall stamp on both the date of filing and return one to the cooperative with his certificate of filing.
2. Any document is recorded when left for record in the proper office with all required fees paid.";

Section 10-2206 which provides in part that the secretary of state shall file in his office a duplicate original of the application of a foreign corporation for a certificate of authority to do business in this state; and,

Section 47-2203 of the 1957 Supplement which provides that the secretary of state shall file in his office all applications for registration of that trademark.

It is obvious that the legislature in adopting the new corporation act and the new trademark act intended to delete the provision requiring the recording of corporate documents since only the word "filed" is used in the new acts. The one exception to this statement is the new cooperative association act which retains the word "recorded." However, upon reading sections 10-1507, 10-1538 and 10-1553, we receive the impression that the intent of the legislature was to require only filing of the association documents. This is evidenced by the statement in section 10-1553 that the secretary of state shall "stamp on both the date of filing" and in that same section, "any document is recorded when left for record in the proper office."

Section 54-0902(4) of the North Dakota Revised Code of 1943 has not been amended and still retains the provision that the secretary of state shall record in proper books all conveyances made to the state and all articles of incorporation filed in his office. However, since the new corporation act was adopted in 1957 this act supersedes section 54-0902(4) insofar as it pertains to articles of incorporation. If two statutes conflict, the one enacted most recently must prevail.

In view of the fact that the legislature in adopting a new corporation act and a new trademark act omitted the use of the words "record" and "recorded" and retained only the words "file" or "filing" it is the opinion of this office that the secretary of state need only file corporate, cooperative and trademark documents and need not "record" them as that word is normally used.

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