

**OPINION
68-136**

December 13, 1968 (OPINION)

Mr. Q. R. Schulte

State's Attorney

Mountrail County

RE: Counties - Register of Deeds - Destruction of Chattel Mortgage H

by Governmental Agency

This is in reply to your letter of December 4, 1968, with regard to taking certain chattel mortgages off the Register of Deeds' records. Your question is stated as follows:

Does Section 11-18-14 N.D.C.C. apply on Chattel Mortgages of the Farm Security Administration; Chattel Mortgages of the Federal Crop Administration, emergency crop and feed loan section; or does this section apply to individual Chattel Mortgages and not Government."

Section 11-18-14 of the 1967 Supplement to the North Dakota Century Code provides:

REGISTER OF DEEDS TO REMOVE AND DESTROY CERTAIN DOCUMENTS - RECORDS TO BE MADE. The register of deeds in each county in this state, unless otherwise earlier permitted by law, shall remove from the files in his office, and destroy, all seed liens, labor liens, stallion liens, chattel mortgages, threshing liens, crop production liens, combining liens, mechanic's liens, repairman's liens, and sales contracts together with any releases for the same upon which a cause of action has accrued and which cause of action is more than ten years old. At the time of destroying said files the register of deeds shall note on the margin of the index opposite the records of each instrument so removed and destroyed the date when the same was destroyed."

We recognize the general rule in application of statutory law to the effect that the sovereign is not ordinarily bound by a statute unless named therein, and also the possibility that the usual statute of limitations might not run against a governmental entity. However, this statute does not appear to directly affect the governmental entity. Its application as to the Register of Deeds Office prescribes the extent to which such facilities are available and at what point its retention of records ceases. On such basis, it is our opinion that this statute requires the Register of Deeds to remove from his files and destroy the named instruments, upon which a cause of action has accrued and which cause of action is more than ten years old, without regard to ownership of, or parties to the document.

HELGI JOHANNESON

Attorney General