

**OPINION
70-537**

March 30, 1970 (OPINION)

Mr. Leo G. Novacek

Acting Superintendent

Bureau of Criminal Identification

and Apprehension

RE: Weapons - Pistol Permits - Form of Application

This is in reply to your letter of March 10, 1970, wherein you make inquiry of this office regarding permits to carry pistols as provided for in chapter 62-01 of the North Dakota Century Code. You submit the following facts and inquiries in your letter:

For many years the license to carry a pistol has had a blank provided for the serial number of the pistols the applicant owns.

Last fall this office drew up a new application for a North Dakota Pistol Permit and, again, we have provided space for the make, model, and serial numbers of all pistols.

The following questions have now been asked:

1. Can a sheriff refuse to issue a pistol permit to an applicant if the applicant either refuses to or is unable to give a serial number for the pistol he intends to carry?
2. How much discretion does the sheriff have when sections 62-01-06 and 62-01-07 of the North Dakota Century Code provide that a license MAY be issued?
3. Section 62-01-08 of the North Dakota Century Code states 'The license shall be in the form prescribed by the Superintendent of Criminal Identification' Can the said Superintendent require that the application and license bear the serial number of the pistol?"

With reference to your first question, we would first note that the context of section 62-01-08 of the North Dakota Century Code, as amended, relating to licenses to carry pistols, provides as follows:

LICENSE - FORM - TERM - FILING. The license shall be in the form prescribed by the superintendent of criminal identification and shall bear the name, address, description, and signature of the licensee, and the reason given for desiring a license. It shall be issued for not more than one year. It shall be prepared in triplicate, and the original shall be delivered to the licensee, the duplicate shall be sent by registered or certified mail, within seven days after use, to the superintendent of criminal identification, and the

triplicate shall be preserved for six years by the authority issuing the license." (emphasis supplied)

We would first note that in enactment of the foregoing statute, the legislature specifically provided that certain information must be on such license. The requisite information enumerated by the statute concerns only information relative to the licensee and not to the firearm which may be used by such person. It would appear that if the legislature had intended to require information concerning the weapon or weapons which might be used by various persons, it could have included the requirement for such information to be reflected by the application or license. In considering the apparent intent of the statute, however, it appears significant that it is the person who is the subject of the license and not the firearm which is subject to use by such person.

While there appears to be little question but that the superintendent of criminal identification shall prescribe the form of such license, and the statute sets forth the information it is to contain, it would appear that any information additional to that specifically enumerated by statute would necessarily need relate to the person being licensed to carry a pistol and not to the pistol which he may carry by reason of such license. The requirement of information concerning the pistol as a prerequisite to licensure appears tantamount to registration of such firearms, which is not at present required by statute, either under federal law or the law of the state of North Dakota. Accordingly, we are of the opinion that information concerning the pistol or pistols is not a prerequisite to licensure as contemplated by the statute and that a sheriff cannot refuse to issue a pistol permit if such applicant refuses or is unable to supply the serial number, make and caliber of the pistol he intends to carry, or other information relating to such firearm. It would also appear that should such information be necessary to obtain a permit, a most impossible situation would arise where a person desiring such license or holding such license did not actually own a gun and may merely borrow guns from friends at various and sundry times.

In direct reply to your first question, we are of the opinion that a sheriff cannot refuse to issue a pistol permit to an applicant solely for the reason that the applicant refuses or is unable to furnish information relating to the firearm which he may carry.

With regard to your second question, relating to how much discretion a sheriff has when section 62-01-06 and section 62-01-07 of the North Dakota Century Code, as amended, provide that a license "may" be issued, we would note that section 62-01-07 of the North Dakota Century Code, as amended, provides as follows:

LICENSE TO CARRY WEAPON - TO WHOM ISSUED. A license to carry a pistol in this state may be issued to:

1. Any person having a bona fide residence or place of business within the jurisdiction of the county; or
2. Any person having a bona fide residence or place of business within the United States of America and a license

to carry a pistol issued by a competent authority of any state or subdivision of the United States of America,

if it appears that the applicant therefor has good reason to fear an injury to his person or property or that there is another proper purpose for the carrying of such weapon and that the applicant is a proper person to be so licensed and does not fall into any of the categories specified in section 62-01-04 as being a person not legally entitled to own or have in his possession a pistol." (emphasis supplied)

Said section 62-01-04 specifies that persons who have been convicted of serious felonies, persons under seventeen years of age, drug addicts, alcoholics, or persons who are emotionally unstable are persons that shall not own a pistol or have a pistol in their possession or under their control.

In view of the specification of the statutes relating to who may own, possess or exercise control over pistols, as well as specifications as to who may be licensed under specified terms and specified reasons therefor, it would appear that should an applicant for a permit to carry a pistol not fall within the category of such persons prohibited to own, possess or exercise control over pistols and such person possesses all other requirements and conditions enumerated in the statutes, the sheriff would not be able to refuse to issue a permit to such person. In other words, it would appear that the sheriff could refuse to issue such permit only in the event that a statutory prohibition exists or that he has more material reason or knowledge of a material fact that such a person is not a proper person to be so licensed in refusing to issue such license. It would not appear that he could refuse simply because he suspected that the individual was not the type of person that he would wish to be so licensed. To provide otherwise would mean that the issuing officer would have unlimited discretion and that if such issuing officer determined that no persons should be so licensed he could simply refuse to license all persons within his jurisdiction, thereby defeating the intent of the statute. We would note, however, that it would be incumbent upon the applicant to show such issuing officer that he meets statutory qualifications and has a valid reason for desiring such a permit. In direct reply to your second question, it is our opinion that a sheriff may refuse to issue such permit to carry a pistol only in the event that a statutory prohibition exists or that he has some material reason or knowledge of some material fact for refusing such license.

With regard to your third question, whether the superintendent of criminal identification can require that the application and license bear the serial number of the pistol, it would appear that our conclusion to your first question would preclude the superintendent of criminal identification from requiring such information as a prerequisite to the issuance of such permits. The information required by the statute relates to the licensee and not the firearm. To require additional information concerning the firearm would be tantamount to registration of firearms which is not contemplated by the statute requiring a license to carry a pistol.

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Attorney General