

**OPINION
71-153**

April 12, 1971 (OPINION)

Mr. Thomas F. Kelsch

State's Attorney

Burleigh County

RE: Firearms - Pistols - Licenses

This is in reply to your letter of March 9, 1971, wherein you request the opinion of this office relative to certain questions arising out of Chapter 62-01, North Dakota Century Code, pertaining to the licensing of persons to carry pistols or revolvers.

You state that several persons have attempted to obtain a license to carry a pistol from the sheriff's office by using for their purpose, self-defense. You also state that the sheriff's office has required a more specific purpose, such as target practice or rodent control. You observe that while on one hand this might cause problems to such person if stopped in another state with a pistol in his possession and a license on his person with such a narrow restriction; on the other hand the sheriff's office is concerned about issuing general self-protection purpose licenses in which there is no specific evidence of imminent danger to the applicant or his property.

In this regard you have asked three questions:

1. Does the general state of affairs in our country today with regard to crime and lawlessness provide a prima facie "good reason to fear injury to his person or property?" (A phrase used in Section 62-01-07, North Dakota Century Code)
2. Does the general concern for self-defense fall under the meaning of the statute with regard to "is another proper purpose for carrying such weapon"?
3. Is the sheriff's office the determining authority as to what constitutes a "good reason" or "another proper purpose"?

We will note at the outset that we are not in a position to answer the first question due to the fact that it is premised upon what is essentially a political question, and for that reason does not lend itself to a legal interpretation in the nature of that which is requested.

With regard to your second question, Section 62-01-07, North Dakota Century Code, reads 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 of 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."

This section, in part, authorizes the issuance of a license if the applicant either (1) has good reason to fear an injury to his person or property, or (2) that there is another proper purpose for the carrying of such weapon. The first provision is essentially the "self-defense" provision. It requires that the applicant have "good reason" to fear an injury to his person or property. It is our opinion that if an applicant is unable to show good reason to fear such injury, then he is precluded from obtaining a license for self-defense purposes under the second provision, which requires a showing of "another proper purpose" for the carrying of the weapon. This is so because if an applicant were allowed to acquire a license for self-defense purposes without a necessity of showing "good reason" to fear an injury to his person or property, there would be no logical purpose for the existence of such requirement in Section 62-01-07.

Your third question is concerned with who is the determining authority as to what constitutes "good reason" or "another proper purpose" within the language used in Section 62-01-07, North Dakota Century Code.

Section 62-01-06, North Dakota Century Code, states that a license to carry a pistol may be issued by the sheriff of the county wherein the applicant has residence, and further provides that if the applicant is a resident of a city within such county the sheriff shall notify the chief of police of that city and the chief of police shall inform the sheriff in writing of his objection or approval of the application.

After examination of Chapter 62-01, we find no mention of any other officials, other than the sheriff and chief of police, who would be in a position to determine whether a license to carry a pistol should be issued. It is therefore our opinion that the sheriff, and in the proper instance, the chief of police, is the determining authority as to what constitutes "good reason" or "another proper purpose" as such terms are used within Section 62-01-07, North Dakota Century Code.

HELGI JOHANNESON

Attorney General