In answer to this question, I find no statutory provisions or legal precedents to aid in a solution. However, unquestionably, any entitlement to assistance could not commence before a proper application was duly filed with the county department of public welfare of the county in which the applicant or the aged person requiring assistance resides. It is my opinion, in answer to your question No. 2, that this presents a question of policy, in which the State Department of Public Welfare must necessarily act in conformity with the Federal rules and regulations on the subject.

OFFICIAL OPINION NO. 61

October 13, 1964

Hon. Ralph H. Waltz
State Representative
Hagerstown, Indiana

Dear Representative Waltz:

This is in reply to your letter of September 8, 1964, wherein you request my Official Opinion upon the following question:

"The question has arisen as to whether a chattel mortgage can be purged from the recorder's files under the provisions of the Commercial Code, Acts 1963, Chapter 317, Section 9-403. Apparently, under the old chattel mortgage law there was no provision for purging chattel mortgages from the county recorders records."

Acts 1963, Ch. 317, Sec. 9-403, of the Uniform Commercial Code, as found in Burns' (1964 Repl.), Section 19-9-403, cited in your letter applies only to financing statements filed pursuant to the Code. As you may know, the Code became effective on July 1, 1964. Section 10-102 of the Code among other things specifically repealed the "Chattel Mortgage Act of 1935," Acts 1935, Ch. 147, as amended and found in Burns'
(1951 Repl.), Section 51-501 et seq. However, Section 10-106 of the Code preserved all rights, duties and interests under the act of those persons who had properly recorded chattel mortgages prior to July 1, 1964.


Section 15 of the "Chattel Mortgage Act of 1935," as found in Burns' 51-515, supra, provides in part, as follows:

"A chattel mortgage executed under and pursuant to this act shall be invalid as against creditors, purchasers, junior mortgagees, other lienors and encumbrancers and third parties after the expiration of a period of three [3] years, reckoning from the time of filing of said chattel mortgage or from the time of filing of a statement as herein provided for, unless before the expiration of such term the mortgagee or some one in his behalf shall file a statement containing the names of the parties to the mortgage, the time and place where filed, and the amount then due thereon for principal and interest, in which case the lien of the mortgage shall be extended for three [3] years from and after the date of the filing of said statement: Provided, however, That any mortgage, deed of trust or other indenture encumbering, mortgaging or conveying both real estate and personal property to secure the full and final payment of the principal of and interest on any bonds, notes or other evidences of indebtedness, therein described or referred to, which has heretofore been spread of record, or which shall hereafter be spread of record, in the office of the recorder of the county or counties wherein such property is situated, shall create, be, and remain a valid and continuing lien, upon all the property, real, personal, and mixed, therein described or referred to, from the time of such filing to the expiration of a period of twenty [20] years from and after maturity of the last instalment of all indebtedness secured thereby as shown by such record or by the record of any indenture supplemental thereto, and such mortgage, deed of trust or other indenture, whether heretofore or hereafter filed for rec-
ord, may, if it shall so provide, validly secure future advances and any and all bonds, notes or other evidences of indebtedness which may, from time to time, be executed and delivered thereunder and in accordance with the terms thereof: and Provided, further, That such mortgage, deed of trust or other indenture shall be a valid and continuing lien upon all the property therein described or referred to, including, if such mortgage, deed of trust or indenture so provided, all after acquired personal property, for the period above provided without any refiling or re-recording and without the filing of any statement relative to the continuation of such lien: and Provided, further, That the lien of such mortgage, deed of trust or other indenture shall take priority according to the time of the filing thereof, whether heretofore or hereafter filed, and shall be valid and effective in all respects against the mortgagor, and superior to all rights of any and all unsecured creditors of the mortgagor and any and all subsequent purchasers, mortgagees, lienors and encumbrancers, including judgment creditors of the mortgagor and any and all third persons in the same manner and to the same extent as if said mortgage, deed of trust or other instrument encumbered, mortgaged or conveyed real estate along.” (Our emphasis)

Thus, a chattel mortgage, unless properly extended, expires as to third parties in either three years or twenty years from the time of its filing.

Once a chattel mortgage has so expired, it may be purged from the recorder’s files by following the provisions of Acts 1939, Ch. 91, as amended and found in Burns’ (1961 Repl.), Section 57-501 et seq. This act created in each county of this state, a commission on public records.

Burns’ 57-503, supra, provides:

“All public records which, in the judgment of the commission, have no official or historical value, and which occupy space to no purpose in the offices and storerooms of the county, city, town, township, school
corporation, library or other political subdivision of such county, shall be destroyed or otherwise disposed of. No such records shall be destroyed until a period of at least three [3] years shall have elapsed from the time when they were originally filed, and no public records shall be destroyed within a period of three [3] years if the law provides that they shall be kept for a longer period of time, or if the law prohibits their destruction. No financial records or records relating thereto, shall be destroyed until the audit of such records by the state board of accounts has been completed, report filed and any exceptions set out in such report satisfied.”

The term “public records” as used in the act, is defined in Burns’ 57-509, supra:

“The term ‘public records’ as used in this act means any written or printed book or paper or document or map or drawing which is the property of any county or of any city, town, township, school corporation, library or other political subdivision thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the state has received or is required to receive for filing.” (Our emphasis)

I must therefore conclude in answer to your question, that expired chattel mortgages found in the files of the recorder’s office may be destroyed by following the procedures set out in Burns’ 57-501 et seq.