



STATE OF KANSAS

Office of the Attorney General

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Attorney General

August 28, 1975

ATTORNEY GENERAL OPINION NO. 75-347

The Honorable Elwill M. Shanahan
Secretary of State
2nd Floor - State Capitol
Topeka, Kansas 66612

Attn: Mr. Sherman Parks

Re: Uniform Commercial Code--Maturity Dates--Duties of
Filing Officer

Synopsis: A filing officer who received a financing statement presented for filing on November 12, 1973, which bore a maturity date of November 1, 1973, which date was erroneously inserted, the secured party having intended to designate no maturity date whatever, was under no duty to examine the document, which was formally sufficient, for any inconsistency regarding the accuracy of the maturity date, and properly accepted the instrument for filing. Said financing statement lapsed upon the expiration of sixty days from the stated maturity date notwithstanding the error of the secured party.

* * *

Dear Secretary Shanahan:

You enclose a letter dated August 8, 1975, to your office from Mr. John H. Ross III, secretary of Ash Grove Cement Company, Kansas City, Missouri, concerning a financing statement submitted by Ash Grove as the secured party for filing on November 12, 1973, the debtor being Ready-Mixed Concrete Co., Inc. of Lawrence, Kansas. The stated maturity date was thus twelve days prior to the filing date. Mr. Ross stated in his letter that on November 1, 1973, Ash Grove took a note partially secured by a security agreement covering equipment owned by Ready-Mixed Concrete, a copy of which he encloses. On that same date, the financing statement was prepared, designating the debtor, secured party and property covered by the agreement as stated above. Through

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a secretarial error, however, the date of November 1, 1973, was inserted in the upper right corner of the financing statement. He states that it was not the intention of the secured party to designate any maturity date whatever, and that it was only through this error that the date of November 1, 1973, was indicated.

Through a recent inquiry with your office, the secured party was furnished form K-UCC-3 which disclosed that there was no outstanding security interest of record for the property, which led, in turn, to the discovery that the financing statement filed November 12, 1973, bearing a maturity date of November 1, 1973, had lapsed according to its terms.

You inquire, first, whether the described instrument should have been lapsed by your office after the expiration of the sixty day period from the stated maturity date or whether, as Mr. Ross suggests, the instrument should have remained a valid and enforceable security agreement of record. K.S.A. 1974 Supp. 84-9-403(2) commences thus:

"A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected." [Emphasis supplied.]

The language of this provision is plain and forthright. A filed financing statement lapses on the expiration of sixty days after a stated maturity date. The stated maturity date in this instance was November 1, 1973. The financing statement in question lapsed, thus, sixty days thereafter.

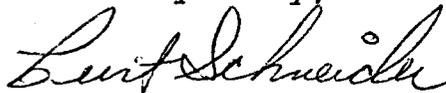
It appears that in this instance, the secured party would burden the filing officer with correcting its own error. Mr. Ross suggests that "the UCC section should have questioned acceptance of these documents when it was evident that the maturity date

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preceded the filing date by eleven days." The filing officer has no such duty. "The secured party has the duty to make sure of proper filing and indexing." *In re Platt*, 257 F.Supp. 478 at 482 (E.D.Pa. 1966). "The duties of a filing officer under the Uniform Commercial Code are ministerial only. *In re Kann*, 61 Berks LJ 171, 180, 6 UCC Rep. 622, 631 (ED Pa Ref 1969)." *In re Brawn*, 6 UCC Rep. Serv. 1031, (Bankruptcy Referee, D. Me. 1969). The financing statement in question fully satisfied the formal requirements of the Code, and was properly accepted for filing. The filing officer has no duty to examine the statement for inconsistencies, and to question a statement for a conjectural error if the statement is formally correct. The authorities reported at 4 Anderson, *Uniform Commercial Code* § 9-403:10 *et seq.* are uniform that the duties of the filing officer are ministerial only, and that the officer has no responsibility for questioning the accuracy of a statement presented for filing. Such is the case here. In *In re Antekeier*, decided by Referee for the United States District Court for the Western District of Michigan, September 3, 1969, found at 6 UCC Reptg. Serv. 1027, it was held that the filing officer who received a financing statement which, instead of describing the collateral, referred to an "attached description of property" was not required to notify the secured party that no attachment describing the collateral had been received, his return to the secured party of an extra acknowledgment copy of the financing statement to the secured party, which did not have an attached description of the property, with a notation thereon of the file number and date and hour of filing was all that was required.

In this instance, the filing officer had no duty to examine the instrument for errors or inconsistencies thereon. The instrument was formally sufficient, and the filing officer was obliged to accept it for filing. The filing officer fully performed any duty arising under the code or otherwise in this instance. The financing statement was properly filed, and has properly lapsed.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj