



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

February 26, 1982

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ATTORNEY GENERAL OPINION NO. 82- 55

Margaret Anderson
Register of Deeds
Russell County Courthouse
Russell, Kansas 67665

Re: Uniform Commercial Code -- Secured Transactions --
Information on Documents on File; Certification
Required

Synopsis: Pursuant to K.S.A. 1981 Supp. 84-9-407(2), the register of deeds shall, upon written request, issue a certificate stating whether any presently effective financing statements or assignments are on file which name a particular debtor. Such certificates must be in the usual form for such documents (i.e. signed by the register of deeds or a deputy), and may be issued only after the statutorily-established fee has been tendered. Cited herein: K.S.A. 84-9-401, 84-9-407.

* * *

Dear Ms. Anderson:

As Register of Deeds for Russell County, Kansas, you request our opinion on a matter involving the Kansas Uniform Commercial Code (UCC), K.S.A. 84-1-101 et seq. Specifically, you inquire concerning UCC document searches performed by your office at the request of individuals pursuant to K.S.A. 84-9-407. You wish to know whether the "certificate" which you issue with your findings must be signed, and whether the fee charged is the same if such a certificate is not provided.

The specific subsection which relates to your inquiry is K.S.A. 84-9-407(2), which states:

"Upon written request of any person and tender of the proper fee, the filing officer

shall issue such officer's certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. If the filing officer is the secretary of state, the fee for such a certificate shall be three dollars (\$3) plus twenty-five cents (25¢) for each financing statement and for each statement of assignment reported therein. If the filing officer is other than the secretary of state, the fee for such a certificate shall be three dollars (\$3) plus twenty-five cents (25¢) for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment after payment of a fee of one dollar (\$1) per page, except that if the filing officer is the secretary of state, the fee shall be in an amount fixed by the secretary of state and approved by the director of accounts and reports under K.S.A. 1980 Supp. 45-204." (Emphasis added.)

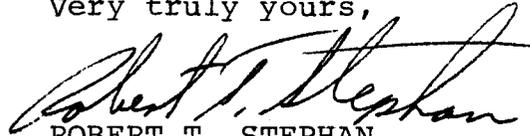
From the language of K.S.A. 84-9-401, it is clear that, as to some filings under the UCC, it is the Register of Deeds who is the "filing officer." Accordingly, if a person requests your office to make a document search, under K.S.A. 84-9-407(2) there exists a duty to do so. Once the search is completed, the results must be certified by you or your deputy.

While the statute does not elaborate as to the form that such a certificate must take, general law on the subject provides some guidance. First, a certificate has been defined as an official representation that some act has been done or that there has been compliance with a required legal formality. Kay-Vee Realty Co. v. Town Clerk of Ludlow, 355 Mass. 165, 243 N.E.2d 813 (1969). A certificate must be in writing to be effective. McCaffrey v. United States, 372 F.2d 482 (10th Cir. 1967). Further, a certificate must be authenticated by the signature of the person who is asserting the truth thereof, Rector v. O'Hara & Sons, Inc., 222 A.2d 243 (Me. 1966), and we note that a failure to sign was held in the Rector case to nullify the certificate.

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Accordingly, it is our opinion that a certificate issued by your office pursuant to K.S.A. 84-9-407(2) must be signed by either the register of deeds or a duly-authorized deputy in order to fully comply with the statute. Additionally, as the statute makes no provision for a document search which is not accompanied by a certificate, such an instrument must be provided in all cases where the statutory fee is collected.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Jeffrey S. Southard
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RTS:BJS:JSS:hle