



STATE OF KANSAS

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May 2, 1986

ATTORNEY GENERAL OPINION NO. 86- 65

The Honorable Jack H. Brier
Secretary of State
Capitol Building, 2nd Floor
Topeka, Kansas 66612

Re: Uniform Commercial Code -- Secured Transactions;
Sales of Accounts, Contract Rights and Chattel
Paper -- Farm Equipment or Products; Continuation
of Financial Statement; Necessity of Filing
Documents with Secretary of State

Synopsis: A financing statement filed with the Secretary of
State, pursuant to K.S.A. 1985 Supp. 84-9-410, must
be accompanied by a copy of the most recent
effective prior financing statement, and any
amendments, on file with the Register of Deeds.
Also required is a statement that the prior
financing statement is still effective. Such
transitional filing statement may not be filed if
not accompanied by these supporting documents.
Cited herein: K.S.A. 84-1-401; K.S.A. 1985 Supp.
84-9-410.

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Dear Secretary Brier:

As Secretary of State for the State of Kansas you request our
opinion on a question concerning K.S.A. 1985 Supp. 84-9-410.
That statute provides that a transitional financing statement
filed with your office be accompanied by a copy of the most
recent effective prior financing statement. You state that
many of the transitional financing statements received by your
office are not accompanied by a copy of the previous financing

statement as required by K.S.A. 1985 Supp. 84-9-410. Therefore, you ask whether in view of the ministerial nature of your duties under the Uniform Commercial Code, K.S.A. 84-1-101 et seq., you should file or return the transitional financing statements which are submitted without the required attachments.

K.S.A. 1985 Supp. 84-9-410 states in pertinent part:

"(1) If collateral described in a financing statement is equipment used in farming operations, farm products or accounts or general intangibles arising from or relating to the sale of farm products by a farmer and the statement was filed in the office of the register of deeds before January 1, 1984, and was effective on that date:

"(a) The financing statement shall continue to be effective until its effectiveness lapses or is terminated. Until the effectiveness of a financing statement is continued by a filing under subsection (1)(b), any amendment to the financing statement and any continuation statement, termination statement, statement of assignment or statement of release shall be filed in the office of the register of deeds where the original financing statement was filed.

"(b) On and after January 1, 1984, and before July 1, 1989, the effectiveness of the financing statement can be continued only by the filing with the secretary of state, within six months before the effectiveness of the statement lapses, of a financing statement which complies with K.S.A. 84-9-402 and amendments thereto, except that the financing statement may be signed by either the secured party of record or the debtor, and which is accompanied by: (i) A carbon, photocopy or other suitable reproduction of the most recent effective prior financing statement, and any amendments and statements which relate to the secured

party's rights thereunder, on file with the register of deeds and evidence of their proper filing; and (ii) a statement that the prior financing statement is still effective.

"If there are financing statements on file in two or more counties with respect to the same secured transaction, the multiple filings may be consolidated into a single filing in the office of the secretary of state at any time within six months before the effectiveness of any one of the financing statements will lapse. In that case, the financing statement shall be accompanied by a reproduction of the most recent effective prior financing statement filed in each county, any amendments and statements filed in each county and relating to the secured party's rights under the financing agreement, evidence of their proper filing and a statement that the financing statement is still effective. When a financing statement consolidating filings in two or more counties is filed with the secretary of state, the period of time within which any future filings relating to the secured transaction must be made shall be determined by the date that the financing statement is properly filed with the secretary of state." (Emphasis added.)

As the underscored portion of K.S.A. 84-9-410 indicates, the financing statement to be continued must be accompanied by a reproduction of the most recent effective prior financing statement and any amendments thereto. Though the duties of the Secretary of State under the Uniform Commercial Code are ministerial in nature, your office may return statements which are out of compliance with K.S.A. 1985 Supp. 84-9-410.

81 C.J.S. States §132 describes the duties of the secretary of state as follows:

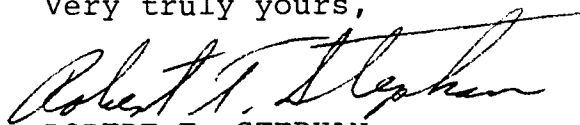
"The secretary of state must perform the duties of his office, and the only substantive powers which he possesses are those enumerated in the constitution or

statute. He cannot perform functions which are not within the authorized scope of his official duties." (Emphasis added.)

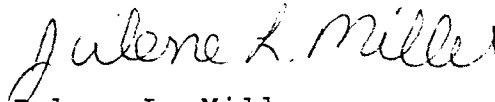
K.S.A. 1985 Supp. 84-9-410 designates the Secretary of State as the repository of the transitional financing statements. The legislature delegated the responsibility to oversee the administration of such filings to the Secretary of State. This delegation of legislative authority implicitly imposes upon the Secretary of State the duty to follow the letter of the law. Therefore, your office would be required to reject any transitional financing statements which are submitted out of compliance with K.S.A. 1985 Supp. 84-9-410.

In conclusion, a financing statement filed with the Secretary of State, pursuant to K.S.A. 1985 Supp. 84-9-410, must be accompanied by a copy of the most recent effective prior financing statement, and any amendments on file with the Register of Deeds. Also required is a statement that the prior financing statement is still effective. Such transitional filing statement may not be filed if not accompanied by these supporting documents.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Julene L. Miller
Deputy Attorney General