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ATTORNEY GENERAL OPINION NO. 87- 50

Bill Graves
Secretary of State
2nd Floor, State Capitol
Topeka, Kansas 66612-1594

Re: Uniform Commercial Code -- Secured Transactions;
Sales of Accounts, Contract Rights and Chattel
Paper -- Access to Filing Information

Laws, Journals and Public Information -- Records
Open to Public -- Access to Records

Synopsis: K.S.A. 1986 Supp. 84-9-411 restricts the disclosure of Uniform Commercial Code (U.C.C.) filing information under the Kansas Open Records Act. (K.S.A. 45-216 et seq.) Accordingly, the secretary of state may provide a business access to filings under article 9 of chapter 84 of the Kansas Statutes Annotated only if the business can demonstrate that its interest in obtaining said information is "related exclusively" to one of the transactions specifically enumerated in K.S.A. 84-9-102. Cited herein: K.S.A. 45-216; 45-217; 45-221; 84-9-102; 84-9-104; K.S.A. 1986 Supp. 84-9-411.

* * *

Dear Secretary Graves:

As Secretary of State, you request our opinion on the legality of providing businesses access to U.C.C. filing information (financing statements) through various methods such as

computer tapes, microfilm copy, and xerox copies, even though these businesses are not using the information for the purpose of making their own lending decisions.

The Kansas Open Records Act is contained in K.S.A. 45-216 et seq. K.S.A. 45-216(a) provides:

"It is declared to be the public policy of this state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy."
(Emphasis added).

K.S.A. 45-217(f)(1) defines public record as "any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency." Therefore, the financing statements in question are clearly public records. However, a document which is a public record is not automatically open to public inspection. Under K.S.A. 45-221(a)(1), a public agency is not required to disclose "records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court"

In our opinion, K.S.A. 1986 Supp. 84-9-411, the statute which dictates to whom the secretary of state shall provide filing information, is a restrictive state statute under K.S.A. 45-221(a)(1). We note in this regard that K.S.A. 1986 Supp. 84-9-411(2)(c) allows the secretary of state to adopt, in addition to the methods for providing information specified in the statute, "any other appropriate method of disseminating the information." Accordingly, since the statute does not restrict the method by which information may be provided, the particular method for dissemination which is used is not critical.

However, K.S.A. 1986 Supp. 84-9-411 does limit who may have access to U.C.C. filing information. The statute specifies in subsections (1), (2) and (3) that information concerning filings under article 9 of chapter 84 of the Kansas Statutes Annotated shall be provided "to persons with an interest in the information that is related exclusively to the purposes of that article."

Before enacting this statute, the legislature anticipated that filing information might be acquired by businesses interested

in marketing the information to lending institutions. See Kansas Report of Legislative Interim Studies, p. 237 (1983). This fact, considered together with the aforementioned language in subsections (1), (2) and (3), suggests that the legislature intended to restrict access to U.C.C. filing information.

To determine the scope of this restriction, it is necessary to examine the purpose of article 9 of the U.C.C., as articulated in K.S.A. 84-9-102. Under subsection (1), except for those transactions excluded from article 9 by K.S.A. 84-9-104, the article applies:

"(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

"(b) to any sale of accounts or chattel paper."

In addition, subsection (2) states that the article applies:

". . . to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in section 84-9-310."

Transactions which are specifically excluded from Article 9 are enumerated in K.S.A. 84-9-104.

In light of the restrictive language contained in K.S.A. 1986 Supp. 84-9-411(1)(2)(3), which limits to whom U.C.C. filing information may be provided, it is our opinion that a company wanting access to filing information must first demonstrate that its interest in obtaining said information is "related exclusively" to one of the transactions specifically enumerated in K.S.A. 84-9-102. Furthermore, if a company has an interest in a transaction which is specifically excluded from Article 9 by K.S.A. 84-9-104, access to filing information should be denied. A case-by-case determination of whether a company has demonstrated an appropriate interest

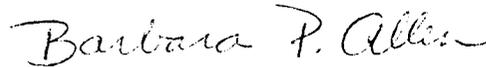
in filing information must be made by the secretary of state's office.

In summary, K.S.A. 1986 Supp. 84-9-411 restricts the disclosure of Uniform Commercial Code (U.C.C.) filing information under the Kansas Open Records Act. (K.S.A. 45-216 et seq.) Accordingly, the secretary of state may provide a business access to filings under article 9 of chapter 84 of the Kansas Statutes Annotated only if the business can demonstrate that its interest in obtaining said information is "related exclusively" to one of the transactions specifically enumerated in K.S.A. 84-9-102.

Very truly yours,



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