



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 19, 1977

ATTORNEY GENERAL OPINION NO. 77- .237

Dennis A. Dietz
Washington County Attorney
Washington County Courthouse
Washington, Kansas 66968

RE: Uniform Commercial Code - Financing Statements -
Timely Filing of Continuance Statements - K.S.A.
1976 Supp. 84-9-403(3)

SYNOPSIS: Under the Uniform Commercial Code a financing statement lapses upon the expiration of a five-year period from the date of filing unless a continuation statement is filed WITHIN six months PRIOR to such expiration. The Register of Deeds has an affirmative duty under the UCC to file a continuance statement only within the time limitation specified. Where continuance statements are erroneously filed prior to six months before the expiration date, such statements are ineffectual and the financing statement will lapse when the five-year time limit expires.

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Dear Mr. Dietz:

You state that your county register of deeds has financing statements over five years old, and which have continuation statements which have been filed PRIOR to six months before the expiration date of the original statement. You point to K.S.A. 1976 Supp. 84-9-403(3) which provides: "(3) a continuation statement may be filed by the secured party

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within six (6) months prior to the expiration of the five year period specified in subsection (2)." You further point to the opinion of this office dated July 20, 1971 and reported in VII Attorney General's Opinions 238 wherein it was stated "it is our opinion that the filing officer may not file a continuation statement within other than the times prescribed by K.S.A. 84-9-403(3)."

You state that this opinion appears to place an affirmative duty on the register of deeds to ascertain the expiration date of a financing statement, and then refuse to file a continuation statement unless it is WITHIN six months prior to such expiration date. You say your research does not reveal the source of this affirmative duty, if any, and you request our explanation.

The basis of our opinion is the statute itself, which says: "A continuation statement may be filed WITHIN six (6) months PRIOR to the expiration date ..." In our opinion of July 20, 1971, we cited this wording of the statute and then concluded: "Conversely, a continuation statement may NOT be filed save within the time periods specified supra." (Page 239) We believe a continuation statement, filed out of time, is ineffectual under the UCC.

The legislature has placed a burden both on the secured party and the filing officer to comply with a specific filing time period. A continuation statement serves as public notice to intervening lien holders that a priority lien is being extended. It is the legislative plan that a financing statement lapses after five years unless so continued. 84-9-403(3) goes on to say: "Upon TIMELY filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse."

This language is explicit in order to prevent a secured party from offering and the filing officer from filing what could be unnecessary continuation statements at any time and thus preserving the priority of a lien indefinitely and giving a misleading notice. We must reaffirm our previously expressed opinion that there is an affirmative duty on the part of the register of deeds to assist in carrying out the filing requirements of the Uniform Commercial Code. In fact, in the very title of K.S.A. 1976 Supp. 84-9-403 the revisor of statutes lists "Duties of Filing Officer".

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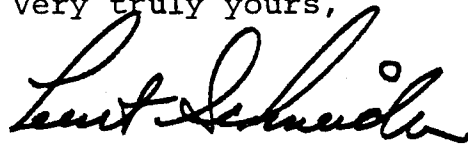
You further inquire whether the register of deeds, who has incorrectly accepted and filed ineffectual continuation statements prior to the time specified, may now remove and destroy such expired financing statements which are accompanied by their invalid continuance statements?

K.S.A. 1976 Supp. 84-9-403(3) provides:

"The filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one (1) year after the lapse."

It is our opinion that since the filing of the continuance statements was not done in accordance with the UCC statutes, the destruction of the records cannot be followed under UCC statutes. Unless these records are microfilmed or photocopied, and thereby preserved, we believe that K.S.A. 19-250 et seq. should be followed so that these records would be available as evidence in case of litigation.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw