

**OPINION
67-328**

July 24, 1967 (OPINION)

Mr. A. Friedman

Register of Deeds

Cass County

RE: Uniform Commercial Code - Filing Fees - Pre-code Instruments

This is in reply to your letter of July 18, 1967, relative to the fees for filing under the Uniform Commercial Code. You state the following facts and questions:

"I am charging and collecting fees for filing according to the new schedule of fees effective July 1, 1967 as required in chapter 41-09 (article 9) of the Uniform Commercial Code.

"It appears that because I have been requested to file two documents that pertain to some instruments that were filed in this office before the Uniform Commercial Code went into effect, the new schedule of fees would not apply, and that the proper fee would be the pre-code fee which actually was fifty cents of one dollar as stated.

"I therefore respectfully request your opinion as to what the proper fee for filing would be in the above case.

"I am enclosing copies of correspondence I have received in this matter which are more or less self explanatory.

"It seems to me the statute referred to in these copies pertain to the legality and validity of pre-code instruments and has nothing to do with the filing fee."

Ordinarily we require that requests for official opinions come from the office of state's attorney, since that office acts as legal advisor of the county officials, by statute, and the state's attorney is, by statute, authorized to request the opinion of his office. However, because of the statewide effect of the interpretation of this matter we deem it proper to make an exception in this instance and issue the official opinion to you.

The correspondence which you enclosed with your letter indicates that the question involved is whether the filing fee for filing an affidavit and statement of continuance of a factor's lien and an affidavit for renewal of a chattel mortgage should be governed by the fee schedule of the Uniform Commercial Code or whether the fee schedule should be that applicable prior to the adoption of the Uniform Commercial Code. In both instances the factor's lien and the chattel mortgages were originally filed prior to the effective date of the Uniform Commercial Code.

With your letter you enclosed a copy of an opinion on this precise

matter issued by the Honorable Douglas M. Head, Attorney General of the State of Minnesota, on June 13, 1967, to Maylon G. Muir, Jackson County Attorney, Jackson, Minnesota.

As you have noted in your letter, the filing fee for somewhat similar documents filed in accordance with the Commercial Code would be two dollars. See section 41-09-42(5) of the North Dakota Century Code, as amended by section 29 of chapter 98 of the 1967 Session Laws. Prior to the adoption of the Uniform Commercial Code the filing fee for filing these documents was fifty cents. See section 11-18-05(B)(1) of the North Dakota Century Code.

This contention is that this matter is governed by section 41-01-10 of the North Dakota Century Code, as amended, which provides:

"EFFECTIVE DATE - TRANSITION. This Act shall become effective on July 1, 1966. It applies to transactions entered into and occurring after that date. Transactions validly entered into before such effective date and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such repeal or amendment had not occurred."

The Minnesota statute is, for all practical purposes, identical to section 41-01-10 of the North Dakota Century Code, as amended. The Minnesota Attorney General concluded that this statute gave the lienholder the right of continuing the lien in accordance with the law governing factor's liens prior to its repeal. We are in agreement with this conclusion since there can be no doubt but that the filing of a continuance of a lien is a right or interest flowing from the transaction validly entered into before the effective date of the Uniform Commercial Code and that such continuation is part of the termination, completion, consummation or enforcement referred to in section 41-01-10.

The opinion of the Minnesota Attorney General also concluded that the filing fee applicable to the filing of the continuation would be that prescribed by statute prior to the effective date of the Uniform Commercial Code since as of the date, the provision for the filing fee was repealed.

Prior to the amendment of section 11-18-05 by the 1965 Legislative Assembly (effective date of amendment was July 1, 1966, the same as the Uniform Commercial Code. See section 6, chapter 296, 1965 SL) subsection B(1) thereof provided:

"The register of deeds shall charge and collect the following fees:

* * *

B. For filing an instrument relating to personal property;

1. Chattel mortgage, crop mortgage, conditional sale contract, assignment of chattel mortgage, assignment of conditional sale contract, renewal of chattel mortgage,

bill of sale, thresher's lien, farm laborer's lien, seed lien, repair lien, service lien, and any other chattel lien not specifically mentioned herein, fifty cents; if an assignment is contained in any of said instruments when originally filed, no additional charge shall be made for such assignment unless separate indexing is requested, in which case the charge for such assignment shall be an additional fifty cents; but no fee shall be charged for releasing the same;

* * *."

After the 1965 amendment to this statute it reads as follows:

"The register of deeds shall charge and collect the following fees:

* * *

- B. For filing an instrument relating to personal property; Bill of sale, thresher's lien, farm laborer's lien, seed lien, repair lien, service lien, financing statement, statement of assignment, and any other chattel lien not specifically mentioned herein, one dollar; if an assignment is contained in any of said instruments when originally filed, no additional charge shall be made for such assignment unless separate indexing is requested, in which case the charge for such assignment shall be an additional one dollar; but no fee shall be charged for a termination statement or for releasing the same;

* * *."

We would note the 1967 Legislative Assembly made no changes in the above quoted statute.

We do not believe the Legislature was prohibited from increasing the fees for the filing of continuation statements under the previous laws governing factor's liens and chattel mortgages, etc. Thus had the Legislature amended section 11-18-05(B) to provide for increased charge for filing such statements, such increased fees would be applicable to the situation at hand. However, the Legislature amended section 11-18-05(B) to correspond with the Uniform Commercial Code and deleted any reference to the filing of the documents with which we are concerned in this matter. The reference in section 11-18-05(B) to "financing statement" and "statement of assignment" obviously has reference to these instruments as defined by the Uniform Commercial Code. In this instance, we are not concerned with the Uniform Commercial Code or the filing fees thereunder but rather to factor's liens and chattel mortgages. In view of the fact the reference to filing fees for these items was deleted from section 11-18-05(B) we must necessarily, under the provisions of section 41-01-10 of the North Dakota Century Code, as amended, quoted above, refer to section 11-18-05(B) prior to its amendment in 1965 in order to determine the proper fee to be charged. The fees prescribed by section 11-18-05(B) as amended, and by section 41-09-42(5) of the North Dakota Century Code, as amended, the Uniform Commercial Code,

refer only to papers to be filed under the provisions of the Uniform Commercial Code. As stated above these are not papers filed in accordance with the filing provisions of the Uniform Commercial Code but rather are to be filed in accordance with the statutes governing factor's liens and chattel mortgages prior to the repeal of such statutes by reason of the adoption of the Uniform Commercial Code.

It is therefore our opinion that the filing fees for the filing of a continuance of a factor's lien and chattel mortgage, which liens were originally filed prior to the effective date of the Uniform Commercial Code, would be the fees specified in section 11-18-05(B) prior to its amendment in 1965.

HELGI JOHANNESON

Attorney General