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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 23 1993
DEPT. OF JUSTICE

DATE: September 21, 1993

SUBJECT: Suspect documents offered for filing under the Uniform Commercial Code.

REQUESTED BY: Allen J. Beermann, Secretary of State
Debra Pester, UCC Administrator

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

You have previously provided us with copies of a number of documents which were presented to you to be filed by the Uniform Commercial Code Division of the Office of the Nebraska Secretary of State. You had concerns that these documents, which purported to create or perfect various types of liens against judges, attorneys, and state and federal officers, did not represent legitimate liens and did not meet filing criteria under the Uniform Commercial Code (UCC). As a result, you asked us to review the various types of documents at issue, and to provide you with some guidelines as to whether these documents should be filed. This opinion is intended as our response to your request, and we will attempt to set out some general guidelines as to how these categories of documents should be treated. We will also provide you with a separate letter discussing your specific inquiries with respect to particular documents. Before we discuss the various categories of documents involved, however, we will briefly discuss the legal requirements and responsibilities placed upon a filing officer with respect to financing statements under the UCC.

A filing officer acts in a purely ministerial capacity when he or she receives a UCC financing statement for filing. 68 Am Jur 2d *Secured Transactions* § 414. As a result, the filing officer does not have any responsibility to ascertain the accuracy of the information contained in the financing statement, nor is the filing officer required to look beyond the statement itself for

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information relevant to its filing. *Id.* However, it is also clear that a filing officer should reject any financing statement which does not appear in substantial compliance with the UCC. 68 Am Jur 2d *Secured Transactions* § 416. In a similar fashion, we have also previously indicated that forms of documents purporting to give notice of improper real estate transactions are invalid from the outset and should not be filed with the county Register of Deeds. Op. Att'y Gen. No. 86024 (February 26, 1986); Op. Att'y Gen. No. 102 (June 18, 1985); Op. Att'y Gen. No. 233 (November 5, 1984). It is also important to remember that the financing statement itself does not create any lien, and if there is no valid security agreement in effect at the time that the financing statement is filed, the financing statement does not create a security interest or have any other effect at that time. 68A Am Jur 2d *Secured Transactions* § 322.

UCC Filings

A number of the purported liens and security interests involved in your inquiry were submitted on normal UCC financing statement forms or on the normal forms used for assignment of UCC financing statements. Those documents which you have received can be categorized, and we will deal with each category in turn.

1. Signatures "by accommodation." On these financing statement forms:

a. the box for the debtor's name contains the name of the judge, officer or attorney who is the target of the suspect lien; however, the space in that box for a social security number or federal I.D. number is left blank or contains a listing of "Not Available" or "Unknown."

b. the secured party is listed as the private individual who is filing the financing statement,

c. the description of the property covered includes such comments as "UCC FS-4 PRIVATE AGREEMENT "TRUE BILL" and "Signature by Accommodation attachment."

In addition, these financing statements are not actually signed by the debtor, but the secured party types in the debtor's name and then enters his own handwritten signature for the debtor "by accommodation."

We received the first example of this type of form from the Secretary of State in January of this year, and at that time, we told Mr. Beermann that this type of form should not be accepted for filing. We continue to believe that such is the case.

A financing statement under Section 9-402 of the UCC must be signed by the debtor, with some exceptions not applicable here. Under Section 1-201 of the UCC, a document is "signed" if it "includes any symbol executed or adopted by a party with present intention to authenticate a writing." As noted above, in the box reserved for the signature of the debtor in this category of financing statement, the debtor's name is typed in and then there is a typewritten notation which indicates that the debtor's signature is "by accommodation." The secured party then signs his own name to this portion of the form on behalf of the debtor. We do not believe that such a signature involves a symbol executed or adopted by the debtor with a present intention to authenticate a writing. As a result, we do not believe that this category of form has been properly signed by the debtor, and this category of form should not be filed on that basis.

We would also note that the examples of this category of financing statement which you sent us generally do not include a sufficient description of the items to which the security interest claimed by the "secured party" purports to attach. We do not believe that these financing statements should be filed on that basis as well.

2. <u>No handwritten signature by the debtor.</u> The second category of financing statements which you sent us is much the same as that described above -- the box for the debtor's name contains the name of the public official who is subject to the suspect lien, the secured party is a private individual, and the box for a description of the property covered includes statements such as "UCC-FS-4 Private Agreement True Bill" or "Signature by Accommodation Attachment." However, this category of form contains no handwritten signature by or for the debtor. Instead, the portion of the document for the debtor's signature contains a typewritten notation that the signature of the debtor is by the "Accommodation/Surety Party" for the Debtor. It is our understanding, based upon documents received by attorneys in this office, that copies of this category of financing statement were actually sent directly to the public officials who were involved as purported debtors, and those public officials were asked to sign the financing statements as a debtor and return them to the secured parties for filing.

We assume that no public official signed these financing statements or returned them to the "secured parties" who originally sent them out. Therefore, this category of UCC financing statements should not be filed for the same reasons as with the first category discussed above. These documents do not contain a valid signature of the debtor and they do not sufficiently describe the collateral.

3. Assignments of UCC financing statements involving public officials. The third category of actual UCC documents which various individuals attempted to file in your office involves assignments of purported security interests. There is a specific UCC form for continuation, termination, assignment, amendment or release of a previously filed financing statement. Various individuals attempted to use this form to assign their suspect liens against public officials.

This category of documents involves a UCC assignment of financing statement form where the debtor listed is a public official, judicial officer or attorney. The secured party is a private individual and the assignment of the "security interest" is generally to another private individual. In the space on the form for listing the file number of the original financing statement to be assigned, there is no file number from your office. Instead, that space contains a certified mail receipt number. (Presumably, this is because there is no file number for the original suspect financing statement since it was not filed.) These "assignments" usually also contain some attachments which speak of a "True Bill Private Agreement."

Again, we do not believe that these assignments should be filed by your office. Under Section 9-405 (2) of the UCC, an assignment of a previous financing statement must contain the file number and date of filing of the original financing statement to be assigned. Since these documents do not and cannot contain such a file number and date, they are not in proper form. Moreover, these documents do not contain an adequate description of the collateral assigned which is also required by Section 9-405 (2). For these reasons, you should refuse to file these "assignments" of previous financing statements.

NON-UCC FILINGS

In addition to attempted filings involving specific forms prescribed under the UCC, you have apparently received a number of other types of documents which individuals have presented to you for filing, and you have sent us copies of those documents for our review. We will discuss each of those categories of documents below.

1. Contract Provision Release without Prejudice or Consideration

These documents purport to release the state and federal governments from their "contractual" obligations to enforce the Fourteenth Amendment to the United States Constitution. The purported authority for this "release" is Sections 1-107 and 3-601

of the UCC. These documents contain a Notice, a copy of the filer's birth certificate, an affidavit and a revocation of "governmental assumed power of attorney."

Sections 1-107 and 3-601 of the UCC deal with breach of a sales contract and discharge of the obligations of certain parties involved with negotiable instruments. Those sections are not even part of the UCC dealing with Secured Transactions. In addition, these documents are not signed by the debtor, they do not identify the collateral, etc. Consequently, we do not believe that the "contract provision releases" are proper financing statements under the UCC, and they should not be filed.

2. Various Affidavits and other documents including "Affidavit of Sovereign" and "Affidavit and Codicil."

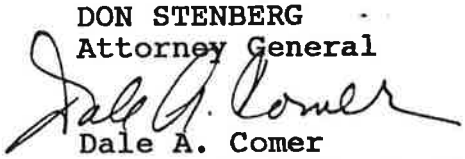
These various affidavits and other documents contain an incomprehensible recitation of UCC citations and discussions of the affiants' beliefs concerning the judicial system and state and federal "codicils." It is unclear what they are intended to do. In any event, they are clearly not financing statements under the UCC -- they are not signed by the debtor, they do not identify the collateral involved, etc. As a result, we do not believe that they should be filed for the reasons set forth above.

DISPOSITION

It is our understanding that you are holding a number of documents in the various categories discussed above along with the filing fees that were tendered with those documents. You also forwarded a number of documents to us for our review, and we will return those documents to you. Since we believe that these documents may not be filed under the applicable provisions of the UCC, we suggest that you return the documents along with the filing fees to the individuals who presented them to you for filing.

Sincerely yours,

DON STENBERG
Attorney General



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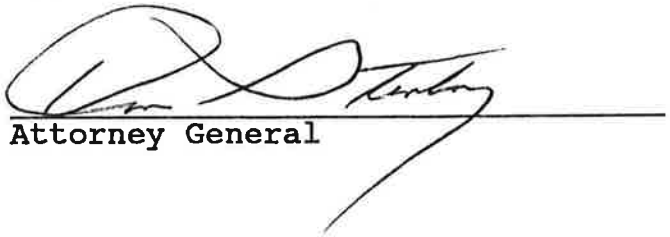

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