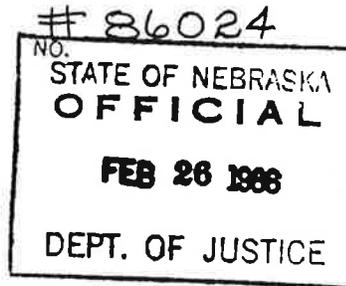


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: February 25, 1986

SUBJECT: Authority of the register of deeds regarding
the filing of improper "lis pendens"

REQUESTED BY: Stephen L. Von Riesen
Hall County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

This is in response to your request for an opinion dated February 12, 1986, concerning the authority of the register of deeds regarding the filing and cancellation of a document entitled "lis pendens." A copy of the document in question was attached to your request. Inasmuch as we have received questions from other county attorneys regarding similar attempted filings with the registers of deeds, we deem it appropriate to issue an official opinion on this subject.

There have apparently been a rash of attempted filings of bogus "lis pendens" with various registers of deeds in the State of Nebraska. Of course, a true lis pendens may properly be filed if it meets the statutory requirements of Neb.Rev.Stat. §25-531 (Reissue 1979). In this regard the statute provides as follows:

When the summons has been served or publication made, the action is pending so as to charge third persons with notice of pendency, and while pending no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title; Provided, in all actions brought to affect the title to real property, the plaintiff may either at the time of filing his petition or afterwards, file, or in case any defendant sets up an affirmative cause of action, and demands relief which shall affect the title to real estate, he may, at the time of filing such answer, or at any time afterwards, file with the clerk or register of deeds of each county in which the said real estate thus to be affected, or any part thereof, may be situated, a notice of the pendency of such

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action, containing the names of the parties, the object of the action, and a description of the property in such county sought to be affected thereby. . . . The clerk or register of deeds of such county shall record the notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in said notice, for which he shall be entitled to receive filing fees in accordance with sections 33-109 and 33-112, to be paid by the person filing such notice, and which shall be taxed as part of the costs in said action. (Emphasis added.)

The bogus "lis pendens," that we have reviewed, including the one which you have referred to us, have pertained solely to an action for civil damages brought by plaintiffs in federal court under the federal RICO statutes. The bogus "lis pendens" list property titled to the defendants in these actions. The actions themselves in federal court, however, have not been brought directly to affect the title to this property, nor do they purport to do so in any manner. These filings thus do not meet the requirements of §25-531 for a lis pendens action and are an obvious attempt to harass the defendants in the federal court action by clouding title to their property.

We have previously discussed the authority of registers of deeds in regard to other such improper filings which were designed merely to harass individuals by clouding title to their property. See Opinions No. 233, November 2, 1984, and No. 102, June 18, 1985, copies attached. We believe the rationale set forth in these previous opinions is applicable to the present situation involving these bogus "lis pendens."

In Opinion No. 233 we determined that similar types of filings were in effect "invalid, null and void ab initio with no force or effect under the laws of the State of Nebraska," and that the filing of such documents was improper. We further indicated that because such documents are of no force or effect in Nebraska and are not authorized by law to be filed, that such instrument should not be filed by the registers of deeds and that the refusal to file such documents should not result in any liability for the registers of deeds. We further indicated in Opinion No. 102 that because such documents are "a legal nullity," such documents should be treated as if they had never been filed in the first place and they should be returned to the filer along with any filing fees and an explanation that there is no authority for filing such documents."

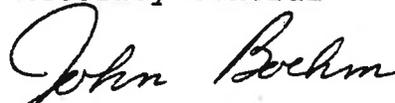
As we have indicated, these bogus "lis pendens," do not meet the requirements for a valid lis pendens under §25-531, they are

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thus of no force and effect, and, in essence, are a legal nullity. When presented to the register of deeds for filing, they should be refused, or in the event that they were filed, they should be treated as if they had never been filed and returned to the filer along with the filing fees. In this regard we do not believe it is necessary to respond to your question concerning the "inherent authority" of the register of deeds to file a notice of cancellation, since we believe that the document should be treated as if it had never been filed in the first place, and therefore no such cancellation would be required.

Sincerely,

ROBERT M. SPIRE
Attorney General

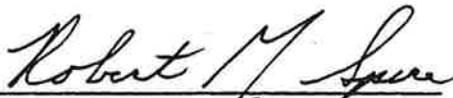


John Boehm
Assistant Attorney General

JB/bae

Encl.

APPROVED:


Robert M. Spire
Attorney General