

Opinion No. 62-20

January 29, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mrs. Sarah Gooding, County Clerk, San Juan County, Aztec, New Mexico

QUESTION

QUESTIONS

1. Relative to instruments filed under the provisions of the Uniform Commercial Code, is it necessary to charge \$ 0.75 per page for comparing a carbon copy of an instrument that we are asked to certify?
2. So far as we can determine there is no mention of fees for making lien searches in the new Code. Are we to still charge only \$ 0.50 per search?
3. As we read the statutes, 61-8-2, N.M.S.A., 1953 Comp., was repealed and for purposes of instruments filed under the Uniform Commercial Code it is no longer necessary to have the signature of the borrower or lender notarized. Is this correct?

CONCLUSIONS

1. Yes.
2. No, see analysis.
3. Yes, but see analysis.

OPINION

ANALYSIS

The answer to your first question above is governed by the provisions of Sec. 50A-9-407, N.M.S.A., 1953 Comp. (PS) This section provides as follows:

"INFORMATION FROM FILING OFFICER -- (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall furnish a photocopy of any instrument filed with said filing officer and shall, upon request, certify said photocopy as being a true copy of the record. The uniform fee for each such photocopy shall be \$.75 per page, and the fee for each such certificate shall be \$.50. The filing officer shall further certify as a true and correct copy of the record any type or photocopied instrument furnished to the filing officer by any person, if the filing officer finds such a copy to be a true and correct copy. The fee for such certificate shall be \$.50, with an additional fee of \$.75 for comparing each page so certified with the filed instrument."

As specified under the wording of the above section the filing officer is required to charge a fee of \$ 0.75 for comparing each page of any instrument to be certified as a true and correct copy. In addition, this section specifies that a fee of \$ 0.50 shall be chargeable for certifying that such copy constitutes a true and correct copy. The fees specified above are fixed by statute and are required to be charged for the services enumerated therein.

In your second question, you inquire as to the fees imposed for making lien searches concerning instruments filed under the Uniform Commercial Code.

Under the text of Sec. 9-407 of the Uniform Commercial Code as drafted under the model Act, subsection (2) specifically provides that:

"(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated herein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein."

This subsection was entirely omitted from the version of the Code adopted by the Legislature for New Mexico. As specified in Anderson's Uniform Commercial Code, Vol. 2, Sec. 9-407:2, at page 634-635 such original Code provision "provides for the supplying of information by the filing officer to the person filing any document with him in order to show the disposition made by the officer of such document. It also provides for the furnishing by the filing officer, upon request by any person, of information relating to financing statements and statements of assignment in his files."

The deletion of this provision from the text of the Uniform Commercial Code enacted for New Mexico, leaves no provision within the Code requiring County Clerks to conduct lien searches at the request of an individual, nor does it specify any fee for making such search.

An examination of the statutes contained outside the Uniform Commercial Code, and which relate to the duties of the county clerks, indicates no legislative provision requiring county clerks to conduct a search of such class of records kept by such officer. Section 71-1-12, N.M.S.A., 1953 Comp., provides that:

"County clerks shall be entitled to receive as fees for searching their records and certifying the result, five cents for each name searched against for deeds, and the same for mortgages, and twenty - five cents for a search for judgments or for mechanic's lien."

The instruments required or permitted to be filed under the Uniform Code in order to perfect a security interest in goods, crops or other personalty would not fall within the provisions of the above cited statute designating fees for searching the records of the county clerk.

Sections 71-1-10 and 71-1-11 relate to specifically enumerated fees which county clerks are legally entitled to charge, but such statutes do not provide for conducting searches of county records upon request of an individual for possible liens or encumbrances under the name of any debtor.

Under the Uniform Commercial Code, Sec. 50A-9-401, N.M.S.A., 1953 Comp., the Secretary of State is also a filing officer for instruments filed under the Code. Specific provision is contained in Sec. 4-2-6, N.M.S.A., 1953 Comp., for the Secretary of State to charge for searching any records filed therein. This section sets out in part:

"For searching the legislative records, laws, journals, executive records, etc., for data requested by any individual or company, at the rate of fifty cents for each hour the clerk is engaged."

Thus, in answer to your second question, we conclude that a county clerk is not under any legal duty to conduct searches at the request of private persons, of records filed in such office pursuant to the Uniform Commercial Code, and no statutory fee is provided for such service. Under the applicable statutes relating to the Secretary of State, however, specific statutory provision is made for the charging of fees for conducting searches of records in such office.

By virtue of Sec. 71-5-1, et seq., N.M.S.A., 1953 Comp., statutory authority is granted to any citizen of this State to inspect public records held by public officers in this State, and such would entitle individuals to conduct lien searches of public records filed in the office of county clerks under the Uniform Commercial Code.

The answer to your third question was recently dealt with in our Attorney General's Opinion No. 62-1, dated January 2, for filing all instruments filed pursuant to the Uniform Commercial Code, with or without acknowledgments appearing thereon. However, it was noted that due to the possibility of a judicial interpretation of such requirement in a more restricted manner, it is recommended that until the matter is definitely set at rest, the better practice to follow for all persons filing instruments under the provisions of the Code is to include acknowledgments. A copy of the opinion referred to above is included herewith for your information.