

## Opinion No. 71-79

June 18, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Mr. Fred Boone Assistant District Attorney Ninth Judicial District Portales, N.M.  
88130

### QUESTIONS

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What is the fee for filing a security agreement covering fixtures on real estate?

#### CONCLUSION

See analysis.

### OPINION

#### {\*115} ANALYSIS

Section 50A-9-401 (1), NMSA, 1953 Comp. (P.S.) provides that:

The proper place to file in order to perfect a security interest is as follows:

...

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then **with the real estate records** in the office where a mortgage on the real estate concerned would be filed or recorded; . . . (Emphasis added).

{\*116} The phrase "with the real estate records" was inserted as a result of a 1967 amendment. The rationale behind this change was to insure that anyone searching real estate records would find any encumbrances on fixtures pertaining to such real estate. See 3 Natural Resources Journal, 487, 508.

Under normal circumstances the fees for filing documents under the Uniform Commercial Code (Sections 50A-1-101 to 50A-9-507) are specified in the Code itself. See 50A-9-403(5), 50A-9-404(3), 50A-9-405(2) and 50A-9-406.

However, here we have the unusual situation of a document described in the Uniformed Commercial Code which has to be filed "with the real estate records". The question which then arises is the applicability of Section 71-1-10, NMSA, 1953 Comp. which

outlines, **inter alia**, the recording fee for documents related to land. Section 71-1-10, **supra**, specifies "County clerks shall receive for recording the following fees **where the instrument is not photocopies.**" (Emphasis added). The schedule of fees that follows ranges from \$ .25 to \$ 5.00, **regardless** of the length of the document. This section goes on to state:

For each instrument recorded, and where the instrument is photocopied, the recording fee shall be one dollar seventy-five cents (\$ 1.75) for the first page and one dollar (\$ 1.00) for each additional page or portion thereof.

By reading these two portions of Section 71-1-10, **supra** together, it becomes clear that the legislature intended to assess a charge **per page** where documents are photocopies for recording.

According to the information supplied this office by several county clerks, it is their practice to photocopy any document pertaining to real estate, and to use that copy as the recording instrument. Thus, all documents filed in the real estate records of the County Clerks' offices are photocopies. In order for a security agreement covering fixtures to be filed "with the real estate records", it too must be photocopied.

In light of the legislative intent expressed in Section 71-1-10, **supra**, and considering the cost of photocopying, it is the opinion of this office that the provisions of Section 71-1-10, **supra**, control where, as in this case, the document has to be photocopied in order to be filed in accordance with the Uniform Commercial Code. This, the charge would be \$ 1.75 for the first page and \$ 1.00 for each additional page.

By: Oliver E. Payne

Deputy Attorney General