

SECRETARY OF STATE: Photocopies of a security agreement or  
UNIFORM COMMERCIAL CODE: financing statement containing the  
PHOTOCOPIES: photocopied signatures of both parties  
SIGNATURES: is entitled to be filed of record pro-  
FILING: viding it meets all the other require-  
ments of the Code and the proper fee  
is tendered. The Secretary of State should accept all instru-  
ments for filing where the instrument meets the formal require-  
ments of the Code and administratively reject those that do not  
meet the requirements of the Code.

Opinion No. 49 (1966)  
Opinion No. 402 (1965)

January 12, 1966



Honorable James C. Kirkpatrick  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Kirkpatrick:

This opinion is in response to your inquiry whether a photo-  
copy of a security agreement or financing statement containing  
the photocopied signatures of both parties is entitled to be  
filed of record in your office when tested by the requirements  
of Section 400.9-402(1), RSMo Cum. Supp. 1965?

The pertinent statutes are:

(1) Section 400.9-402(1), RSMo Cum. Supp. 1965 -

"A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and if fixtures, also the name of the record owner. A copy of the security agreement is sufficient as a financing statement if it

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contains the above information and is signed by both parties. Without limiting the generality of the preceding sentence, any financing or other statement or security agreement filed pursuant to part 4 of article 9 which contains a copy, however made, of the signature of a secured party or his representative or of the debtor or of his representative is 'signed' by the secured party or the debtor as the case may be."

(Underscoring added)

Section 400.1-201(39), RSMo Cum. Supp. 1965, reads as follows:

"'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing."

This office assumes for the purpose of this opinion that the instrument offered meets all the other formal requirements of the Uniform Commercial Code and in particular, Section 400.9-402(1), as amended.

The question is generated by the language of the amendment which is the underscored portion of the Section (supra).

Certainly, legislators are not presumed to have intended a useless act. (Gross v. Merchants-Produce Bank, 390 S.W. 2d 591). Courts favor a construction of statutes which harmonizes with reason and which avoids an unjust, absurd, unreasonable or oppressive result. (Trio Mobile Home Park Inc., v. City of St. Charles, 390 S.W. 2d 432). In construing a statute, words should be given their plain and ordinary meaning to promote its object and purpose. (Julian v. Mayor et al, 391 S.W. 2d 864). We should first seek the lawmakers intention for the whole act; and, if possible, to effectuate that intention (Kirkwood Drug Co. v. City of Kirkwood, 387 S.W. 2d 550; Julian v. Mayor et al, supra).

In examining this section (supra) and considering statutes of other states, we find Section 1-201(39) McKinney's Consolidated Laws of New York, Annotated, Book 62 1/2 Part I, Uniform Commercial Code, reads as follows:

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"'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing. Without limiting the generality of the preceding sentence, any financing or other statement or security agreement filed pursuant to part 4 of article 9 which contains a copy, however made, of the signature of a secured party or his representative, or of a debtor or his representative, is 'signed' by the secured party or the debtor, as the case may be."

Had the Missouri Legislature added the language of the amendment to Section 400.1-201(39), supra, the statutes of New York and Missouri would be identical. Instead, the legislature tacked the amendment to Section 400.9-402(1) as set out above. As a consequence, the initial clause of the amendment does not appear germane and is possibly out of context. Read without this clause, the amendment is as follows:

"Any financing or other statement or security agreement filed pursuant to part 4 of article 9 which contains a copy, however made, of the signature of a secured party or his representative or of the debtor or of his representative is 'signed' by the secured party or the debtor as the case may be."

If the amendment is read as above (disregarding the initial phrase) we believe the amendment to be a special statute having as its meaning a limited, special definition of the word "signed" when applied to "statements or agreements filed pursuant to part 4 of article 9." Section 400.1-201(39), supra, is a "general statute." The definition of "signed" found in Section 400.1-201(39) applies to all other sections of the Uniform Commercial Code except that portion of part 4, article 9 as specially amended. Thus, the term "signed" is enlarged in its meaning in Article 9.

It is a familiar rule of statutory construction that special statutes prevail over general statutes on the same subject. Thus, the Springfield Court of Appeals stated in *City of Poplar Bluff v. Poplar Bluff Loan and Building Association*, 369 S.W. 2d 764, 767 has stated the rule as follows:

"[6] Where there is one statute dealing with a

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subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

See also *Veal v. City of St. Louis*, 289 S.W. 2d 7, 12.

Binder's Uniform Commercial Code Service (Hart & Willier) § 91A.11 p. 9-70 states as follows:

"The second and third alternatives raise obvious legal questions. There is no reason why a reproduction--photostatic copy, xerox, etc., -- is not within the terms 'copy of the security agreement.' But is it signed? The answer must be 'yes.' The security agreement is signed, and a copy may serve as a financing statement. The requirements of a financing statement are not those of a statute of frauds, as they are for a security agreement; the notice concept is amply served. Nothing is gained by an overly technical construction of the financing statement requirements and, indeed, the Code's overriding goal to simplify, modernize and clarify the law of commercial transactions is imperative upon courts. See § 12.03[2]. Of course, whether a filing officer will agree when presented with a reproduction is another matter. See Section 91A.14."

In our opinion, the amendment *supra*, extends the provisions of the original act by allowing a permanent copy to be made which, can be filed under the provisions of the amended section (*supra*) provided there is some form of authentication. The photocopy of the signatures of the debtor and secured party

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provide this.

The mischief that could arise from allowing the filing of a financing statement and/or security agreement that has not been authenticated by the debtor in some fashion is obvious. It is the debtors "signature" that substantially decreases the possibility of fraudulent filing, viz., a "secured party" deliberately filing without authorization to interfere or create a false impression or the possibility of an erroneous description of the collateral.

We conclude, therefore, that a permanent type photocopy of a financing statement or security agreement that contains the signatures of both the debtor and secured party constitutes an "authenticated" copy within the meaning of the statute.

Implicit in your original problem is the question of authority for your office to administratively reject any instrument offered for filing that does not meet the formal requirements of the Code. The requirements we speak of are found in Section 400.9-402, et seq. RSMo Cum. Supp., 1965, as amended. Without belaboring the point further, a casual reading of the pertinent statutes should spell them out for you.

The Secretary of State in our opinion can properly reject an offered instrument that does not meet substantially the formal requirements of the Code. The court, in its opinion in *In Re Smith*, (U.S. District Court Pa. -- 1962) 205 F. Supp. 27, 29, stated:

"\* \* \* That section also provides in subsection 5 that a financing statement 'substantially complying' with the requirements of the section is effective. We think that a financing statement which does not contain the debtor's address does not substantially comply with the formal requirements of the Code. Therefore, the filing officer in the Secretary's office had the right to return the conditional sales contract to the petitioner, and it was incumbent upon petitioner to resubmit a statement which contained the debtor's address.

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"[2,3] Our interpretation of section 9-403(1) is that it refers to the presentation for filing of a financing statement which substantially complies with the Code's formal requirements for financing statements, and one which the filing officer would, therefore, be dutybound to accept."

Accordingly, we conclude that the Secretary of State, or his delegate, has a duty to accept for filing all instruments that meet the formal requirements of the Uniform Commercial Code as expressed in the statutes (supra) and to reject any that does not.

It is emphasized these conclusions are very broad in scope and have as their purpose the promulgation of general guidelines. A caveat is urged to the effect that the eligibility for filing of a particular instrument is a separate, specific question that must be determined on the facts in each particular instance. There is no formula to answer all of the questions on this subject.

#### CONCLUSION

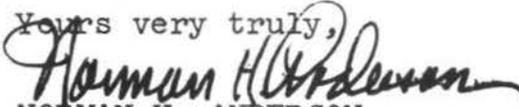
It is the opinion of this office that:

1. A permanent photocopy of a financing statement or security agreement containing photocopied signatures of the debtor and secured party is entitled to be filed as a financing statement in the office of the Secretary of State providing such instrument meets all other formal requirements of the Uniform Commercial Code under Section 400.9-402, RSMo Cum. Supp. 1965.

2. That the Secretary of State or his delegate has a duty to accept for filing all instruments as financing statements that meet the formal requirements of the Uniform Commercial Code set out in Section 400.9-402 (supra) providing the appropriate filing fee is tendered.

3. Those instruments offered as financing statements that do not meet the formal requirements of Section 400.9-402 (supra) should be rejected.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Richard C. Ashby.

Yours very truly,  
  
NORMAN H. ANDERSON  
Attorney General