

OPINION NO. 79-074**Syllabus:**

Pursuant to R.C. 1309.39(E), a financing statement covering crops growing or to be grown or any other type of collateral referred to in R.C. 1309.39(E) satisfies the requirements of R.C. 1309.39(E) with respect to description of the real estate when it incorporates by reference to a previously recorded instrument the "full" or metes and bounds description of the real estate.

To: Elmer Spencer, Adams County Pros. Atty., West Union, Ohio
By: William J. Brown, Attorney General, November 8, 1979

I have before me your request for my opinion concerning the sufficiency of the description of real estate required in a financing statement pursuant to R.C. 1309.39(E). You inquire:

. . .whether a financing statement covering growing crops or to be grown or any of the other types of collateral referred to in Section 1309.39(E) satisfies the requirement of Section 1309.39(E) with respect to a description of the real estate when the financing statement contains the following language or language of similar import as appropriate:

The above crops are growing or are to be grown on a 200 acre farm located on County Road No. 21, 4 miles north of Farmdale, Ohio, as more fully described in Deed Book (or Mortgage Record) _____, page _____, in the records of the Recorder of _____ County, Ohio.

Specifically, your question is whether R.C. 1309.39(E) requires that the financing statement as filed contain a "full" or metes and bounds description of the real estate or whether the statement may satisfy the requirements of the statute through the incorporation by reference of a "full" or metes and bounds description contained in a prior recorded instrument.

R.C. Chapter 1309 is part of Ohio's adopted version of the Uniform Commercial Code. R.C. 1309.39 sets forth the formal requisites of financing statements. R.C. 1309.39(E) addresses itself to financing statements covering crops growing or to be grown and various other types of collateral closely associated with real estate. It provides:

(E) A financing statement covering crops growing or to be grown or timber to be cut or minerals or the like, including oil and gas, or accounts subject to division (E) of section 1309.03 of the Revised Code, or a financing statement filed as a fixture filing pursuant to section 1309.32 of the Revised Code must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner or record lessee. (Emphasis added.)

Thus, the test of the adequacy of the description of real estate in a financing statement is whether, if the same description were contained in a mortgage of the real estate, such description would afford constructive notice to all those concerned of the existence of the mortgage. If the description would afford such notice, it is adequate to meet the requirements imposed by R.C. 1309.39(E) on a financing statement.

A question concerning incorporation by reference of a "full" or metes and bounds description of real estate in a mortgage was presented in Dodd v. Groll, 8 Ohio Cir. Dec. 334 (Henry Cir. Ct. 1898), aff'd, 63 Ohio St. 557 (1900). In that case, a mortgage was executed and filed which did not contain a "full" description of the real estate, but rather incorporated by reference the metes and bounds description found in the deed books of the county, reciting the date, volume, and page on which the deed was recorded. Plaintiff brought an action to foreclose the mortgage. The defendant, a subsequent purchaser of the real estate subject to the mortgage, contended that the description of the real estate contained in the mortgage was insufficient to afford her actual or constructive notice of such mortgage.

The Henry Circuit Court, in dismissing the defendant's contentions and concluding that the description of the real estate contained in the mortgage was sufficient as constructive notice of the mortgage, stated:

By this record she [defendant] was put fairly upon inquiry and had such notice that an examination of the deed would have disclosed fully the complete description of the premises. Having looked at the record of this mortgage, as we presume in law, she did look, she could not safely neglect to take the one step further which was necessary to give complete information as to the title.

See Jones on Mortgages, volume 1, sec. 67. "A mortgage which does not name the town, county or state in which the land is situated, may nevertheless be rendered certain in the description of the premises by reference to another deed which contains a full and accurate description; or, to the land of adjacent owners." (Dodd v. Groll, 8 Ohio Cir. Dec., supra, at 336.)

Thus, it is clear that a mortgage which incorporates by reference to a prior recorded instrument the "full" or metes and bounds description of the real estate is sufficient to give constructive notice of such mortgage under the law of Ohio. I, therefore, conclude that the incorporation by reference to a prior recorded instrument of a "full" or metes and bounds description of the real estate is sufficient to meet the requirements for a financing statement set forth in R.C. 1309.39(E).

In specific answer to your question, it is my opinion, and you are advised, that pursuant to R.C. 1309.39(E), a financing statement covering crops growing or to be grown or any other type of collateral referred to in R.C. 1309.39(E) satisfies the requirements of R.C. 1309.39(E) with respect to description of the real estate when it incorporates by reference to a previously recorded instrument the "full" or metes and bounds description of the real estate.