

## OPINION NO. 74-025

## Syllabus:

1. A continuation statement must be filed within the time period specified by R.C. 1309.40(C) to continue the effectiveness of the original filed financing statement.

2. A continuation statement has no effect until the date on which the effectiveness of the original filed financing statement is to expire.

3. If the requirement of timely filing is not met in the filing of a continuation statement pursuant to R.C. 1309.40(C), the effectiveness of a filed statement lapses upon the expiration date of such statement, which is determined by R.C. 1309.40(B).

4. The timely filing of a continuation statement pursuant to R.C. 1309.40(C) continues the effectiveness of the original filed financing statement for five years after the last date to which the filing was effective.

To: Paul H. Mitrovich, Lake County Pros. Atty., Painesville, Ohio  
By: William J. Brown, Attorney General, March 28, 1974

I have before me your request for my opinion, which states the following questions:

"1. Regarding timely filing of a continuation statement in Section 1309.40(C), must it be within the period specified or can the recorder accept and honor a continuation statement prior to this period?

"2. Does the continuation statement cumulate the effectiveness of the financing statement on the anniversary date or the date of filing the continuation statement?

"3. If the recorder has accepted continuation statements prior to 'timely filing', what is the status of these statements?

"4. Does the filing of the continuation statement extend the life of the financing statement for its original term or for the expired portion of the term?"

By way of background, R.C. Chapter 1309. is part of Ohio's version of the Uniform Commercial Code. It concerns secured transactions in which a lender, seller, or other person takes a security interest in tangible or intangible property. See R.C. 1309.01. A security interest which is "perfected" gives the holder rights to the collateral superior to those he would have if it were unperfected, because perfection of the security interest is designed to put other persons on notice of the security interest. See R.C. 1309.20. In certain cases, perfection is accomplished by filing a financing statement with a county recorder or the Secretary of State. R.C. 1309.21 and 1309.38. The filing of a financing statement is effective for a certain period of time, and may be renewed, or continued, by a continuation statement. R.C. 1309.40(C). Your questions concern such a continuation statement.

R.C. 1309.40, which concerns the filing of financing statements, reads, in part, as follows:

"(A) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under sections 1309.01 to 1309.50, inclusive, of the Revised Code.

"(B) (1) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing except as stated in division

(B) (2) of this section. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

"(2) A filed financing statement which states that it relates to an obligation secured by both (a) a mortgage upon real estate filed for record within this state and (b) a security interest in collateral, whether or not such collateral includes or consists of goods which are or are to become fixtures situated upon such real estate, shall, if such financing statement states a maturity date of such obligation, or the final installment thereof, of more than five years, be fully effective until the expiration of sixty days after such maturity date set forth therein. Such financing statement shall also contain a reference to the recorder's file number of the mortgage upon real estate or to the volume and page of the mortgage record in which such mortgage is recorded.

"(C) A continuation statement may be filed by the secured party (1) within six months before and sixty days after a stated maturity date of five years or less or the stated maturity date of a financing statement referred to in division (B) (2) of this section, and (2) otherwise within six months prior to the expiration of the five-year period specified in division (B) of this section. Any such continuation statement must be signed by the secured party, identifying the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in division (B) of this section unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer may remove a lapsed statement from the files and destroy it."

(Emphasis added.)

Your first question is whether a continuation statement filed pursuant to R.C. 1309.40(C) must be filed within the period specified in that section. R.C. 1309.40(C) appears to be clear and unambiguous, and it is well settled that when a statute is clear and unambiguous, effect must be given to the plain meaning of the words without consulting other indicia of intent or meaning. That Section provides a certain specified time period within which a secured party may file a continuation statement to continue the effectiveness of a filed financing statement. The effectiveness of the original statement is only

continued "upon timely filing of the continuation statement". "Timely filing", as used in R.C. 1309.40(C), clearly means filing within the time period specified by that Section. Thus a continuation statement must be filed within the time period specified by R.C. 1309.40(C) to continue the effectiveness of the original filed financing statement.

Your next question concerns the date upon which a continuation statement becomes effective. R.C. 1309.40(C) provides that "Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective \* \* \*". Thus a continuation statement would have no effect until the date on which the effectiveness of the original statement is to expire, at which time such effectiveness would be continued for another five years. Note that "the last date to which the filing was effective" is 60 days after the stated maturity date in some cases. R.C. 1309.40(B). Your fourth question, which concerns the period of time for which the effectiveness of the original financing statement is continued, is also answered by the above-quoted phrase from R.C. 1309.40(C). While the period for which an original filed financing statement is effective may vary, a continuation statement continues the effectiveness of the original statement for five years in all cases.

Your third question concerns the status of a continuation statement which was accepted by a county recorder prior to the time period specified by R.C. 1309.40(C) for the filing of such statements. Public officers cannot bind the government by acts outside their express authority. State, ex rel. Laskey v. Board of Education, 35 Ohio St. 519 (1880); State v. Lake Shore and Michigan Southern Railway Co., 1 Ohio N.P. 292 (1895). A continuation statement must be timely filed to continue the effectiveness of the original filed financing statement, and a county recorder is not authorized to accept continuation statements prior to the time period specified by R.C. 1309.40(C). Thus I must conclude that if the requirement of timely filing is not met in the filing of a continuation statement, the effectiveness of a filed financing statement lapses upon the expiration date of such statement, since a county is not bound by the act of a county recorder of accepting a continuation statement prior to the time period specified by R.C. 1309.40(C). I would recommend, however, that notice be given to those whose filings were accepted even though they were not timely. Such persons believe their filings to be effective and should be notified of their actual status.

In specific answer to your question, it is my opinion and you are so advised that:

1. A continuation statement must be filed within the time period specified by R.C. 1309.40(C) to continue the effectiveness of the original filed financing statement.
2. A continuation statement has no effect until the date on which the effectiveness of the original filed financing statement is to expire.
3. If the requirement of timely filing is not met in the filing of a continuation statement pursuant to R.C. 1309.40(C), the effectiveness of a filed financing statement lapses upon the

expiration date of such statement, which is determined by R.C. 1309.40(B).

4. The timely filing of a continuation statement pursuant to R.C. 1309.40(C) continues the effectiveness of the original filed financing statement for five years after the last date to which the filing was effective.