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RECORDER, COUNTY — INDEXING AND FILING AFFIDAVITS OF ASSIGNMENT OF ACCOUNTS RECEIVABLE — REQUIRED TO USE SEPARATE SERIES OF FILE NUMBERS AND TO MAINTAIN SEPARATE INDEX — SECTION 8509-3 GENERAL CODE.

SYLLABUS:

*The county recorder, under the provisions of Section 8509-3, General Code, is required to use a separate series of file numbers and to maintain a separate index in the filing and indexing of affidavits of assignment of accounts receivable.*

Columbus Ohio, October 17, 1941

Bureau of Inspection and Supervision of Public Offices,  
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“House Bill No. 533, enacted by the recent General Assembly provides for the assignment of accounts receivable and the filing with the County Recorder of an affidavit of such assignment.

Such affidavits are to be filed and indexed by the County Recorder in the same manner as chattel mortgages upon chattel property other than motor vehicles.

May we respectfully request your opinion whether in the filing and indexing of such affidavits, the County Recorder may use the file number of chattel mortgages and index the same in the chattel mortgage index record; or, should a separate set of file numbers be used and a separate index be maintained?”

House Bill No. 533, relating to assignment of accounts receivable, now appears in codified form under Sections 8509-3 to 8509-6, inclusive, of the General Code.

Section 8509-3, General Code, in so far as it is pertinent to your inquiry, reads as follows:

“Any person, hereinafter referred to as ‘transferee,’ to whom an account receivable, \* \* \* may be assigned, \* \* \* shall, prior or contemporaneously therewith to any such assignment, file with the county recorder \* \* \* an affidavit setting forth the name and address of the transferee and of the transferor at the time of the execution thereof, and stating that the transferor has arranged to assign to the transferee an account or accounts, which account or accounts need not be described in such affidavit in any manner. Such affidavit shall be sworn to by both the transferee and the transferor, or their respective agents, and shall be filed and indexed in the same manner as chattel mortgages upon chattel property other than motor vehicles, and for filing and indexing the same the county recorder shall receive the same fee as provided by law for the filing and indexing of such chattel mortgages. \* \* \* ”

The filing and indexing of chattel mortgages is governed by Section

8562, General Code, which provides:

“The officer receiving such an instrument shall endorse thereon the time of receiving it and its consecutive number, and enter in a book or on cards, to be provided by the county the names of all parties thereto, alphabetically arranged, with the number of the instrument, its date, the day of filing it, and the amount secured thereby, which entry must be repeated, alphabetically, under the name of every party thereto. He also shall deposit the instrument in his office to be there kept for the inspection of all persons interested. In case said instrument is presented for refiling the officer receiving the same shall file, handle, number index and treat it as an original filing. When any chattel mortgage is refiled or cancelled the date of such refiling or cancellation must be entered upon the margin of such record opposite the original entry if not refiled; or opposite the last entry, if refiled.”

From an examination of the foregoing provisions of the General Code it is apparent that the legislature neither authorized nor prohibited the use of the same set of file numbers and the same index record in the filing and indexing of accounts receivable and chattel mortgages. The fact that accounts receivable are to be filed in the same manner as chattel mortgages is simply a declaration to the effect that the same method of procedure shall be employed.

The phrase “in the same manner” is referred to in the case of *Wilder’s S. S. Co. v. Low*, 112 F., 161, as having a well-understood meaning in legislation and that meaning is not one of restriction or limitation, but of procedure. It means by similar proceedings, so far as such proceedings are applicable to the subject matter.

Webster defines “manner” as: “mode of action; way of performing or effecting anything; method; style; form or fashion.”

To construe the phrase “in the same manner,” however, as being broad enough to permit the county recorder to exercise a discretion in determining whether or not the same set of file numbers shall be employed in filing accounts receivable and chattel mortgages would by implication repeal in part Section 2758, General Code, which provides as follows:

“Upon the presentation of a deed or other instrument of writing for record, the county recorder shall indorse thereon

the date and the precise time of day of its presentation, and a file number. Such file numbering shall be consecutive and in the order in which the instrument of writing is received for record, except chattel mortgages which shall have a separate series of file numbers, and be filed separately, as provided by law. Until recorded each instrument shall be kept on file in the same numerical order for easy reference, and, if required, the recorder shall, without fee, give to the person presenting it a receipt therefor, naming the parties thereto, the date thereof, with a brief description of the premises. When a deed or other instrument is recorded, the recorder shall indorse thereon the time when recorded, and the number or letter and page or pages of the book in which it is recorded."

The requirement in the above section for a separate series of file numbers for chattel mortgages is not necessarily irreconcilable or absolutely repugnant to Section 8509-3, General Code, *supra*, if the phrase "in the same manner" is confined to procedure only and as not constituting authority to employ the same set of file numbers for both types of instruments under consideration.

This latter construction should be adopted in view of the presumption against an implied repeal and since the courts seek to avoid such a repeal by any fair and reasonable interpretation.

In this regard it is stated in the case of *In re Hesse*, 93 O.S., 231, 234, that:

"It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation."

In concluding that accounts receivable should have a separate series of file numbers and be filed separately, a consistent interpretation of the phrase "in the same manner" calls for a separate indexing system as well. By requiring a separate indexing system, however, it is not meant that the same book or card catalogue may not serve as an index for both the chattel mortgages and the accounts receivable. For purposes of economy a tab device or card separator could be utilized in order to stay within the terms of the statute.

In specific answer to your inquiry, therefore, it is my opinion that the county recorder, under the provisions of Section 8509-3, General Code, is required to use a separate series of file numbers and to maintain a separate index in the filing and indexing of affidavits of assignment of accounts receivable.

Respectfully,

THOMAS J. HERBERT,

Attorney General.