

OPINION 66-106

Syllabus:

The county recorder as the filing officer shall file consecutively every instrument purported on its face to be a financing statement, which contains the name and address of the debtor, irrespective of the nature of the security agreement which it is meant to perfect.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: William B. Saxbe, Attorney General, June 14, 1966

Paraphrasing your question in the light of the provisions of Section 4505.13, Revised Code, as it may pertain to the duties of a county recorder, your request for my opinion is: "shall Recorders accept financing statements which include motor vehicles under floor plan financing, including house trailers under the classification of motor vehicles?" You also state that "we believe the answer is clear, pursuant to Section 4505.13, Ohio Revised Code."

Section 4505.13, *supra*, makes no mention of a financing statement. The part of this section presently in question is quoted as follows:

"Section 1309.01 to 1309.50, inclusive, and section 1701.66 of the Revised Code, do not permit or require the deposit, filing or other record of a security interest covering a motor vehicle. * * *

"* * * * * * * *"

In my Opinion No. 113, Opinions of the Attorney General for 1965, page 2-243, it was stated that "The county recorder as the filing officer shall file consecutively all instruments purported on their face to be financing statements, which contain the name and address of the debtor." That opinion discussed at length the duties of the county recorder with respect to the filing of financing statements and it also included this closing admonition at page 2-247, as follows: "I have earlier explained that the filing officer's duties do not require strict adherence to any statute except Section 1309.40 (D), Revised Code, which is a special act, dealing with a specific matter exclusive of others."

Section 1309.39, Revised Code, enumerates the formal requisites of financing statements, which, of course, are no concern of the filing officer. The second sentence of this statute reads as follows: "A financing statement may be filed before a security agreement is made or a security interest otherwise attaches."

It is possible and very probable that some time financing statements will be presented for filing, the object of which could be to give notice to prospective purchasers of real estate whereon mobile homes might at any moment become affixed and lose their motor vehicle status. It is also conceivable that security agreements in connection with metal salvage contracts covering used automobiles on consignment from automobile dealers, which contemplate a change from their motor vehicle status, could give rise to the necessity of a prior perfecting of the same by the filing of a financing statement.

It is true that encumbrances or security interest cannot affect motor vehicles unless they appear on the title or are accompanied with a manufacturer's or importer's certificate, but we are not here directly concerned with security interests.

To expect a county recorder, in certain instances, to ascertain whether or not an automobile or a house trailer is, in fact, under the law, a motor vehicle, before he may accept a financing statement describing such property, would require no less than a capable jurist to be a competent recorder.

It is my opinion that the General Assembly in enacting and amending Section 4505.13, supra, had no intention of thereby giving any instructions to the county recorders, and you are hereby advised that the county recorder as the filing officer shall file consecutively every instrument purported on its face to be a financing statement, which contains the name and address of the debtor.