

OPINION 65-41**Syllabus:**

The uniform fees established for the filing of any of the statements mentioned in Section 1309.40 (F), Revised Code, include the cost of postage required to deliver or send a copy of the filed statement to the party who has furnished the filing officer with a copy and requested that it be marked and returned as provided in Section 1309.40 (F), supra.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, March 24, 1965

Your request for my opinion reads as follows:

"Does the uniform filing fee of two dollars for filing, indexing and furnishing filing data for an original or continuation statement as set forth in Revised Code Section 1309.40 (E) include the cost of postage required to deliver or send a copy of a filed financing statement to a party who has furnished the filing officer with such copy and requested that it be delivered or sent to him under Section 1309.40 (F)?"

The pertinent provisions of Section 1309.40, Revised Code, which are applicable to the consideration of your inquiry are set forth as follows:

"(E) The uniform fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be two dollars.

"(F) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

"(G) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor, owner, lessee, and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars plus one dollar for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar per page."

The only provision in Chapter 1309, Revised Code, referring specifically to a fee for the delivery or mailing of a statement is Section 1309.41, Revised Code. This section relates to the filing of a termination statement and sets forth the duties of the filing officer and the fee chargeable in pertinent part as follows:

"(B) On presentation to the filing officer of such a termination statement he must

note it in the index. The filing officer shall remove from the files, mark 'terminated' and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment, or statement of release pertaining thereto.

"(C) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be one dollar.* * *"

In my research I am unable to find any case law or opinions of the Attorney General which have dealt specifically with the question you have raised. I do wish, however, to refer to several opinions which, although not directly in point, are germane to the consideration of this question. In Opinion No. 3617, Opinions of the Attorney General for 1941, page 206, a question was raised as to whether the county recorder could charge a fee for filing, indexing and cancelling liens arising with the execution of a criminal recognizance by a surety. The Attorney General concluded that no fee could be charged for the following reasons as set forth in part on page 209 of the opinion:

"It is an elementary principle of law that public officers possess only such powers as expressly conferred by the Legislature or which may be implied from the express grants. It follows, therefore, that a county treasurer may pay and the county recorder may receive only those fees for 'recording, filing, indexing and cancelling' which have been provided by law."

"As stated above, fees which may be charged and collected by the county recorder are statutory. Therefore, since it has been shown that the Legislature has failed to make provision for any fees by the recorder for recording, etc. liens arising out of criminal recognizances I am of the view such duties must be performed gratuitously."

In Opinion No. 3220, Opinions of the Attorney General for 1958, page 763, it was held that the treasurer must bear the necessary mailing expense where the statute establishes a mandatory duty upon the county treasurer to return tax receipts in an envelope "with sufficient postage" and no provision is made for charging the cost of postage.

Section 1309.40 (F), supra, sets forth the uniform fee for "filing, indexing and furnishing filing data" for a financing or continuation statement. Section 1309.40 (D), supra, establishes the duties of the filing officer for purposes of filing and indexing the statements, and Section 1309.40 (F), supra, sets forth the duty of the filing officer to furnish evidence of the filing of such statements when so requested. Upon reviewing these subsections of Section 1309.40, supra, it is clear that the duty to send a copy of the filed statement arises upon the "request" of the filer and there is no specific authority vested in the filing officer to charge for postage. In light of the opinions herein cited with which I am in accord,

I conclude that, in the absence of specific authority to charge for mailing costs, the county recorder must carry out his duty under Section 1309.40 (F), supra, without any charge in addition to the uniform two dollar filing fee.

In further support of this conclusion, it is my opinion that the language in Section 1309.40 (E), supra, referring to "furnishing filing data" is sufficient to include the expense of mailing a copy of the financing or continuation statement to the filer requesting such information and proof of filing. The phrase "furnishing filing data" must include such acts of the filing officer since Section 1309.40 (G), supra, specifically covers the furnishing of filing data subsequent to the filing of various statements and specifically provides for the uniform fee to be charged for such information. In view of this language in Section 1309.40 (E), supra, it would be unnecessary to make any additional reference to mailing costs.

I note, however, that Section 1309.40 (F), supra, sets forth this duty not only with respect to the filing of a financing or continuation statement for which the fee is provided in subsection (E), supra, but also with respect to a termination statement, statement of assignment, and statement of release. The filing procedures and fees for these latter mentioned statements are set forth in Sections 1309.42 through 1309.44, Revised Code, respectively, but only in the case of an assignment statement does the prescribed uniform fee specifically include the "furnishing of filing data." I must conclude, however, that even in absence of such language with regard to the fee for a termination statement and statement of release that no charge can be made for postage for the return of a requested copy in the absence of specific authority to do so.

It is also my opinion that the specific reference in Section 1309.41 (C), supra, that the delivery or mailing of the financing statement is included in the uniform fee for termination statements does not support a conclusion opposite to that reached herein. Section 1309.41 (B), supra, imposes the additional duty on the filing officer to deliver or send to the secured party the various statements removed from the records when a termination statement is filed. Since this duty relates to statements other than the one being filed, it was reasonable for the legislature to dispose of the question of postage expenses. The fact that the delivery or mailing expense for the return of a copy of any of the statements mentioned in Section 1309.40 (F), supra, was not specifically included in the uniform filing fee for the various statements does not, however, give the recorder the implied authority to charge for postage.

It is my opinion therefore and you are hereby advised that the uniform fees established for the filing of any of the statements mentioned in Section 1309.40 (F), Revised Code, include the cost of postage required to deliver or send a copy of the filed statement to the party who has furnished the filing officer with a copy and requested that it be marked and returned as provided in Section 1309.40 (F), supra.