

OPINION 65-113**Syllabus:**

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. If such statement purports to cover crops or fixtures and names an owner or lessee, whether or not such status is distinguishable, such name shall be indexed in the real estate mortgage index as the grantor. (Opinion No. 668, Opinions of the Attorney General for 1963, distinguished.)

To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio
By: William B. Saxbe, Attorney General, June 29, 1965

Your request for my opinion at the instance of the Wood County Recorder, relative to the formal requisites of financing statements, reads as follows:

"I respectfully request your opinion as to what constitutes a legally sufficient description of real estate within the meaning of Sections 1309.39 (A) and 1309.40 (D) of the Ohio Revised Code. Section 1309.39 (A)

provides that a financing statement covering crops growing or to be grown or goods which are or are to become fixtures must contain "a description of the real estate concerned and the name of the record owner or record lessee thereof." Section 1309.40 (D) required the recorder to index such statements in the "real estate mortgage records.

"The Wood County Recorder informs me that many such statements contain a mailing address only with no reference to the debtor's status as owner or lessee. Others refer to the real estate as "the Jones' farm on Smith Road in X Township," again with no reference as to the debtor's status. The recorder has been indexing such statements in the general mortgage index even though uncertain as to the identity of the real estate encumbered, if any; however, he has found it impossible to index them in the geographical index to mortgages, etc., maintained in his office because of the grossly inadequate descriptions. Some recorders are refusing to index such statements in the mortgage records.

"It seems that, to entitle such a statement to be indexed in the mortgage records so as to encumber title to real estate, the description should be such as would enable the recorder, his deputies, or an abstractor to locate the real estate concerned from the contents of the statement itself. The secured party should be responsible for furnishing this information. We will be happy to furnish any additional information possible upon request."

There are many cases and opinions holding that the office of County Recorder is one consisting of ministerial functions without any duty imposed upon it to make determinations of legal sufficiency of any paper or document whatsoever which may be entitled to record. In fact if that were not true our county recorders would of necessity be required to render legal opinions which are the prerogative solely of an attorney and counsellor at law.

From my recent opinion, Opinion No. 65-53, Opinions of the Attorney General for 1965, I wish to quote herein pertinent declarations as follows:

"The statutes make it mandatory for the County Recorder to record all instruments of writing required or authorized to be recorded. (Section 317.13), Revised Code.)

"Certain instruments are not eligible for record and shall not be received for record as provided in Sections 317.11 and 317.22, Revised Code.

"It is therefore very clear that a County Recorder need not concern himself with the validity or legal effect of instruments which are presented for record, but accept all which fall under the provisions of statutes herein above explained and refuse others defined by statutes which specifically prohibit their recording."

(Emphasis added)

You infer in your request that a financing statement may encumber title to real property. This is understandable as Opinion No. 3513, Opinions of the Attorney General for 1962, Page 1035, so holds. However, Opinion No. 219, Opinions of the Attorney General for 1963 overrules the former and the entire syllabus of Opinion No. 219, supra, reads as follows:

"1. Opinion No. 3513, Opinions of the Attorney General for 1962, issued December 28, 1962, is overruled and of no further force and effect;

"2. The financing statement created under Chapter 1309, Revised Code, is the device to perfect the security interest in personal property and fixtures against third party creditors and when filed the financing statement must comply in form only with the requirements of Section 1309.39, Revised Code, and

"3. The security agreement is the device that creates the security interest and encumbers personal property and fixtures and if the agreement is filed to perfect the security interest the agreement must comply in form with Section 1309.39, Revised Code, and Section 317.111, Revised Code."

Section 1309.39, Revised Code, specifies the criteria for determining the effectiveness of the financing statement in regard to perfecting a security interest. It is definitely not a guide for determining recordability of the same.

The duties of the filing officer are defined in Section 1309.40, Revised Code, and I attempted to interpret them in Opinion No. 668, Opinions of the Attorney General for 1963.

The syllabus of same is as follows:

"1. Under the terms of Division (D) of Section 1309.40, Revised Code, the County Recorder must index in the existing real estate mortgage records any financing statement which indicates (a) clear intention that such statement covers goods which are or are to become fixtures. (b) a description of the real estate concerned, and (c) the name of the record owner or record lessee of such real estate.

"2. Division (A) of Section 1309.39, Revised Code, places upon the secured party the responsibility for including in the financing statement the specific information regarding fixtures and the description and owner or lessee of the real estate concerned.

"3. With respect to the question of whether a financing statement covers fixtures, the County Recorder is not required to go beyond the language of the statement itself in order to obtain the necessary information to enable him to index such statement in the real estate mortgage records as provided in Division (D) of Section 1309.40, Revised Code."

Section 1309.08, Revised Code, is quoted:

"For the purposes of sections 1309.01 to 1309.50, inclusive, of the Revised Code, any description of personal property or real estate is sufficient or not it is specific if it reasonably identifies what is described."

The committee comment following this section is to the effect that description requirements are evidentiary and they read as follows:

"The test of sufficiency of a description laid down by this section is that the description do the job assigned to it--that it make possible the identification of the thing described. Under this rule courts should refuse to follow the holdings, often found in the older chattel mortgage cases, that descriptions are insufficient unless they are of the most exact and detailed nature, the so-called 'serial number' test. The same test of reasonable identification applies where a description of real estate is required in a financing statement."

Section 1309.08, *supra*, provides only another rule to follow in determining the legal sufficiency and efficacy of a financing statement and not for the purpose of determining its eligibility for record.

Section 1309.40 (D), Revised Code, defines the duty of the filing officer or county recorder, with respect to filing financing statements. It is quoted as follows:

"(D) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement. In addition to the indexing required in the previous sentence, statements covering

crops growing or to be grown or goods which are or are to become fixtures shall also be indexed in the real estate mortgage records by the filing officer according to the name of the owner or lessee given in the statement.

(Emphasis added)

It is significant that the presence of a real estate description is not mentioned in defining the filing officer's duties. It naturally follows that the County Recorder need not concern himself with the presence or adequacy of a property description. In this view I am not unmindful of those certain provisions of Section 317.18, Revised Code, which may appear to be pertinent in this situation. The same is quoted with emphasis:

"The indexes shall show the kind of instrument, the date thereof, the range, township, and section or the survey number and number of acres, or the lot and subplot number and the part thereof, all as the case requires, of each tract or lot of land described in any such instrument of writing."

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, supra, which is a special act, dealing with a specific matter exclusive of others.

It is my opinion and you are therefore advised that 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. If such statement purports to cover crops or fixtures and names an owner or lessee, whether or not such status is distinguishable, such name shall be indexed in the real estate mortgage index as the grantor. (Opinions of the Attorney General for 1963, distinguished.)