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A COUNTY RECORDER IS NOT REQUIRED TO DETERMINE WHETHER A STATEMENT SUBMITTED TO HIM IS LEGALLY SUFFICIENT ONLY IF IT IS WHAT IT PURPORTS TO BE—THE COUNTY RECORDER MUST ACCEPT A PROPERLY SIGNED INSTRUMENT FOR FILING—A CARBON COPY OR FACSIMILE OF SUCH A SIGNATURE MEETS THE REQUIREMENTS OF BEING SIGNED—WHETHER A PERSON INTENDED TO AUTHENTICATE SUCH A STATEMENT SHOULD NOT BE DETERMINED BY THE RECORDER—OPINION 3072, OAG, 1962, §1309.39, R.C.

SYLLABUS:

1. A county recorder is not required to determine whether a financing statement submitted to him for filing under Section 1309.40, Revised Code, is legally sufficient and binding upon the parties thereto, but need only determine whether the form submitted to him for filing as a financial statement appears to be what it is purported to be. (Opinion No. 3072, Opinions of the Attorney General for 1962, followed).

2. When a financing statement which otherwise meets the requirements as to form found in Section 1309.39, Revised Code, and in which the signature of the debtor and/or the second party is affixed thereon in a form which meets the definition of the word "signed" as found in Section 1301.01 (MM), Revised Code, is presented to the county recorder for filing with a tender of the filing fee, the county recorder must accept such instrument for filing.

3. A carbon copy of a signature, a facsimile thereof, a mark, initials, printing or other symbol sufficiently meets the test as to the form of writing required by the definition of the word "signed" contained in Section 1301.01 (MM), Revised Code.

4. Whether a person presently intended to authenticate a financing statement "signed" by any such symbol, is a legal question dealing with the legal sufficiency and binding character of such instrument upon the parties thereto, and such question should not be considered by the county recorder prior to accepting such instrument for filing pursuant to Section 1309.40, Revised Code.

Columbus, Ohio, September 19, 1962

Hon. Geo. C. Steinemann, Prosecuting Attorney
Erie County, Sandusky, Ohio

Dear Sir:

I have your letter requesting my opinion as to whether a county recorder must under Section 1309.40, Revised Code, accept for filing a

financing statement prepared pursuant to Section 1309.39, Revised Code, when one or more of the signatures appearing thereon are obviously not original signatures, but appear to be carbon copies of an original signature.

In Opinion No. 3072, Opinions of the Attorney General for 1962, issued June 15, 1962, I was asked whether a county recorder was required to check each instrument presented to him for filing under Section 1309.40 (A), Revised Code. After quoting division (A) of Section 1309.39, Revised Code, and division (A) of Section 1309.40, Revised Code, I said:

> "There is no specific duty placed upon the county recorder by the above quoted language or by any other language of the Uniform Commercial Code that I have found which would require that he examine for legal sufficiency each instrument filed.
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> "In the early case of *Samuel Ramsey v. Zachariah Riley, Recorder of Miami County,* 13, Ohio, 157 (1844) the Supreme Court had before it a question of whether a county recorder who, without corrupt intent, recorded a forged receipt, could be held liable to a person who relied upon such recorded instrument. The court said, beginning at page 166 of the *Riley* case, *supra*:
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> > " '* * * It is the duty of the recorder to enter of record all deeds, mortgages, and other instruments of writings, required by law to be recorded, and which are presented to him for that purpose. Swan's Sta. 778. It is not his duty to determine the validity of such instruments as may be presented for record, or to ascertain whether they are genuine or forged. But even if it were, and he should act honestly and fairly, according to the best of his ability, he would not be responsible. Yet, undoubtedly, if regardless of his duty he should willfully and maliciously, with full knowledge, enter a false and forged instrument upon record, whereby some person was misled and injured, he would be responsible.'
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> "Considering the above quoted statement of the court and the provisions of Section 1309.39 and 1309.40, *supra,* I am of the opinion that the county recorder is not required to determine whether financing statements presented to him for filing are legally sufficient in that they substantially comply with the Uniform Commercial Code, but the duty of the county recorder is to accept purported financing statements presented to him for filing if such instruments appear to be what they are purported to be."

In connection with your request, it may also be noted that while a county recorder is not required to look into the legal sufficiencies of instru-

ments presented to him for record or filing, he is also not required to accept for record (or filing) an instrument which has not been executed in conformity with all statutory requirements. Opinion No. 2857, Opinions of the Attorney General for 1940, Volume II, Page 911. Thus, while a county recorder is not charged with a duty of determining the legal sufficiency of an instrument presented to him for filing, when, while acting in good faith, it appears to him that the form of an instrument so presented does not comply with the statutory requirements pertaining to such instruments, he may rightfully refuse to file the same.

Coming now to your specific question, whether a financing statement described in Section 1309.39, Revised Code, must contain the *original* signatures of the debtor and the secured party in order to be in compliance with the statutory form and thereby be entitled to be filed as provided in Section 1309.40 (A), Revised Code, Section 1309.39, Revised Code, reads, in part, as follows:

> "(A) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement cover crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.
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> "* * * * * * * * *
>
> "(D) The term 'financing statement' as used in sections 1309.01 to 1309.50, inclusive, of the Revised Code, means the original financing statement and any amendments, but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.
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> "(E) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Apparently your question arises where a copy of the security agreement is used as a financing statement, the copy not being signed anew by the parties concerned.

The word "signed" as used in Section 1309.39 (A), *supra,* is defined in Section 1301.01, Revised Code, which in pertinent part says:

> "As used in Chapters 1301., 1302., 1303., 1304., 1305., 1306., 1307., 1308., 1309. of the Revised Code, unless the context otherwise requires, and subject to additional definitions contained in such chapters:
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> "* * * * * * * * *
>
> "(MM) 'Signed' includes any symbol executed or adopted by a party with present intention to authenticate a writing.
>
> "* * * * * * * * *"

I find nothing in the context of Section 1309.09, Revised Code, which would indicate that an original signature is necessary on a financing statement. The words "original financing statement" as used in paragraph (D) of said section, when considered in context, apparently refer to the first of a series of dealings connected with the same collateral and do not require an interpretation of the word "signed" contrary to its statutory defininition. Furthermore, the provisions of division (E) of Section 1309.39, *supra,* which express the general tone of the Uniform Commercial Code, clearly imply that the broad definition of the word "signed" found in Section 1301.01 (MM), *supra,* should be maintained.

It may be noted that said definition is in accordance with the general rule relating to the legal effect placed upon a mode of affixing one's signature other than by his original writing. I have recently considered said subject in Opinion No. 3029, Opinions of the Attorney General for 1962, issued May 28, 1962. At the risk of overburdening the length of this opinion, attention is directed to the following statement found in Opinion No. 3029, *supra*:

> "I recently considered in my Informal Opinion No. 419, Informal Opinions of the Attorney General for 1962, issued on January 17, 1962, the question of whether a facsimile signature may be used for that purpose. In support of my ruling, I stated:
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> "'* * * * * * * * *
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> "'Although Ohio courts have not directly ruled on the issue, there is *dictum* in the case of *State ex rel., Drucker v. Reichle,* 52 Ohio Law Abs., 95, 96, 81 N.E., 2d, 735, which states that " * * *generally one may adopt as his signature any printed or stamped facsimile copy of his signature and by his conduct be bound thereby * * *."'
>
> "'The general proposition of law in support of this *dictum* in the *Drucker* case, *supra,* is stated in 80 Corpus

Juris Secundum 1289, signatures section 7, as it is quoted in *State ex rel., Independent School District of Tulsa v. Williamson,* 352 P. (2d), 394:

> " ' "In the absence of a statute prescribing the method of affixing a signature, it may be affixed in many different ways and may be written by hand, and printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another, and a facsimile signature may be a genuine signature." '

" 'The overwhelming weight of authority as it appears in other jurisdictions supports this view.'

" 'In *Roberts v. Johnson,* 212 F. (2d), 673, 674, the court stated that:

> " ' "The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same force and effect as though the name were written in the person's own hand writing." '

" 'In *Hagen v. Gresby,* 34 N.E., 349, 159 N.W., 3, the court stated:

> " ' "* * * When a person attaches his name or causes it to be attached to a writing by any of the known methods of impressing his name upon paper with the intention of signing it he is regarded as having 'signed' in writing." '

" 'Other cases holding facsimile signatures valid are *Town Council of Lexington* v. *Union National Bank,* 75 Miss. 1, 22 So. 291; *Tabas Emergency Fleet Corp.,* 9 F. (2d), 648; *Planter* v. *Morris,* 19 Ala. App. 664; *Brown* v. *Butcher,* 6 Hill. (N.Y.) 443 Dec. 755; *Kadota Fig Ass'n.* v. *Case-Swane Co.,* 73 Cal. App. (2d), 815, 176 P. (2d), 523; *Walker* v. *Enrich,* 212 Ark. 598, 206 S.W. (2d), 739; *Felt* v. *Frederick,* 206 P. (2d), 676.'

" 'The general proposition of law relevant to the mode of affixing a signature to a memorandum in writing as it is required by the statute of frauds is stated in the *Restatement of the Law of Contracts, Section* 210, at page 287, as follows:

> " ' "The signature to a memorandum under the statute may be written or printed and need not be subscribed at the foot of the memorandum, but must be made or adopted with the declared or apparent intent of authenticating the memorandum as that of the signer." '

> "'Professor Williston, in commenting on this section states that "The signature may be made in pencil, by rubber stamps, or by typewriter; or a printed signature already on the paper may be adopted." 2 *Williston on Contracts* 1685, Section 585, satisfaction of a memorandum in writing.'"

The language of Section 1309.39, *supra,* is found at Article 9, Section 9-402 of the Uniform Commercial Code. Said latter section was enacted by the legislature of New Mexico along with its adoption of the Uniform Commercial Code, which became effective as law in that state on January 1, 1962. Opinion No. 62-3, Opinions of the Attorney General of New Mexico for 1962, issued January 3, 1962, treated said section 9-402 and is reported at CCH Volume 1, Installment Credit Guide, page 5587, as holding:

> "It is a mandatory requirement under the Uniform Commercial Code (with certain limited exceptions) that both the debtor and the secured party sign the financing statement, but the form of the signature may be initials, printing, or any symbol adopted as a signature."

Whether a carbon copy facsimile, mark, or other "signature," was intended by the "signer" to authenticate a writing is a legal question and its determination is not within the province of the county recorder.

In accordance with the above, I am of the opinion and you are advised:

1. A county recorder is not required to determine whether a financing statement submitted to him for filing under Section 1309.40, Revised Code, is legally sufficient and binding upon the parties thereto, but need only determine whether the form submitted to him for filing as a financial statement appears to be what it is purported to be. (Opinion No. 3072, Opinions of the Attorney General for 1962, followed).

2. When a financing statement which otherwise meets the requirements as to form found in Section 1309.39, Revised Code, and in which the signature of the debtor and/or the secured party is affixed thereon in a form which meets the definition of the word "signed" as found in Section 1301.01 (MM), Revised Code, is presented to the county recorder for filing with a tender of the filing fee, the county recorder must accept such instrument for filing.

3. A carbon copy of a signature, a facsimile thereof, a mark, initials, printing or other symbol sufficiently meets the test as to the form of writing required by the definition of the word "signed" contained in Section 1301.01 (MM), Revised Code.

4. Whether a person presently intended to authenticate a financing statement "signed" by any such symbol, is a legal question dealing with the legal sufficiency and binding character of such instrument upon the parties thereto, and such question should not be considered by the county recorder prior to accepting such instrument for filing pursuant to Section 1309.40, Revised Code.

Respectfully,
MARK MCELROY
Attorney General