

668

## SYLLABUS:

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) 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.

Columbus, Ohio, November 26, 1963

Hon. James K. Leedy  
Prosecuting Attorney  
Wayne County  
Wooster, Ohio

Dear Mr. Leedy:

I have before me your request for my opinion, which reads as follows:

"I respectfully request your opinion and an interpretation of a portion of amended Ohio Revised Code Section 1309.40, effective October 10, 1963. The particular part of said section to which I refer is paragraph 'D' and specifically, the portion of said paragraph hereinafter underlined.

" '(D). A filing officer shall mark such 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 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.'

"The entire section 1309.40 refers to the duties of the 'filing officer' in the recording and indexing of financing statements which pertain to secured transactions under the relatively new uniform Commercial Code of Ohio. In the above underlined sentence, the word 'fixtures' and the need for indexing in the real estate mortgage records of financing statements covering 'fixtures' creates the following questions:

"1. What is a 'fixture' within the meaning of the Ohio Uniform Commercial Code?

"2. Is it the duty of the County Recorder—the 'filing officer'—to determine whether or not a financing statement covers 'fixtures'?"

"3. Can the Recorder require the person presenting the financing statement for filing to advise the Recorder whether or not such statement covers fixtures?"

"4. Can the Recorder index the financing statements covering fixtures in a separate index to be used solely for such indexing of said statements or must said statements be indexed in the existing real estate mortgages?"

In order to determine the extent of the filing officer's duty regarding the indexing of financing statements, Section 1309.40 (D), Revised Code must be read in *pari materia* with Divisions (A) and (C) of Section 1309.39, Revised Code which provide:

"(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 covers crops growing or to be grown or goods which are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof.* A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(Emphasis added)

\* \* \*

\* \* \*

\* \* \*

“(C) A form substantially as follows is sufficient to comply with division (A) of this section:

Name of debtor (or assignor) . . . . .  
 Address . . . . .  
 Name of secured party (or assignee) . . . . .  
 Address . . . . .

1. This financing statement covers the following types (or items) of property:

(Describe) . . . . .

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) . . . . .  
 which is (owned by or leased to) . . . . .

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe Real Estate) . . . . .  
 which is (owned by or leased to) . . . . .

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.

Signature of Debtor (or Assignor) . . . . .  
 Signature of Secured Party (or Assignee) . . . . .”  
 (Emphasis added)

The statutory provisions quoted above and in your request include all amendments to Sections 1309.39 and 1309.40, Revised Code, enacted by the 105th General Assembly which became effective on October 8, 1963.

It appears that Section 1309.39 (A), Revised Code, places upon the secured party the responsibility of designating in the financing statement that the statement covers fixtures. With respect to the question of whether a financial statement covers fixtures, the County Recorder is not concerned with the legal conclusion regarding whether any particular item is a fixture; he is concerned only with the presence or absence in the statement of a clear indication by the parties thereto that it is their intention that such statement shall cover items of property which are affixed or are to be affixed to certain real estate.

Section 1309.39 (A), Revised Code, further specifies that if the financing statement covers any fixtures, “the statement *must* also contain a description of the real estate concerned *and* the name

of the record owner or record lessee thereof." There is no statutory provision requiring the filing officer to go beyond the express terms of the financing statement for information in order to ascertain whether he has a duty to index the statement in the real estate mortgage records as provided in Section 1309.40 (D), Revised Code.

Section 1309.40 (D), Revised Code, clearly states that " \* \* \* statements covering \* \* \* fixtures shall also be indexed in the *real estate mortgage records* \* \* \*." Since this provision does not create any new type of index, it obviously is referring to existing real estate mortgage records. Hence, there appears to be no alternative available to the filing officer regarding the type of index to be used.

In reply to your specific questions, it is my opinion and you are advised that:

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) 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.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General