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SYLLABUS:

If a secured party wishes to file under Section 1309.40, Revised Code, both the security agreement and a financing statement concerning the same security interest, the fee therefor shall be two dollars.

Columbus, Ohio, July 31, 1963

Hon. Donald D. Simmons
Prosecuting Attorney
Wood County
Bowling Green, Ohio

Dear Sir:

I have before me your request for my opinion in which you ask the following question:

“Under Section 1309.40 (E) of the Ohio Revised Code, the fee for filing a financing statement is one dollar (\$1.00).

“Sec. 1309.39 (A) Revised Code states in part, ‘A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.’

“The fee for filing a security agreement is therefore also one dollar (\$1.00).

"If the secured party wishes to file both a security agreement and a financing statement should the filing fee be one dollar (\$1.00) each or would one dollar (\$1.00) cover the filing of both instruments?

"This question recently was asked at a district meeting of recorders and a difference of opinion was expressed among the various recorders present."

Section 1309.39 (A), Revised Code, states :

"(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 attached. When the financing statement cover(s) 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."

(Emphasis added)

The effect of the emphasized language is to authorize the filing of the security agreement in lieu of or in place of a financing statement. There is no requirement in the Ohio Uniform Commercial Code that the security agreement be filed in addition to a financing statement. 23 Ohio State Law Journal, 327.

Section 1309.40 (D), Revised Code, states :

"(D) A filing officer shall mark *each statement* with a consecutive file number * * * and shall hold the statement for public inspection." (Emphasis added)

Section 1309.40 (A), Revised Code, states :

"(A) Presentation for filing of *a financing statement* and tender of the filing fee * * * constitutes filing * * * ." (Emphasis added)

Again, it is clear that these latter sections refer to the singular filing of a financing statement or security agreement and not to the filing of both together. It thus is obvious that, under the circumstances you recite, the filing of both the security agreement and a

financing statement is not pursuant to statute and the filing of one or the other instrument is unnecessary.

Section 1309.40 (E), Revised Code, is as follows:

“(E) The uniform fee for filing, indexing, and furnishing filing data for *an* original or continuation statement shall be one dollar.” (Emphasis added)

Since a security agreement, for filing purposes, is but a financing statement then the charge for filing it would also be one dollar, as indicated in your letter.

It follows from the foregoing that a county recorder is not required to accept for filing both the security agreement and a financing statement covering the same property for a fee of one dollar.

It also follows and you are advised that, if a secured party wishes to file under Section 1309.40, Revised Code, both the security agreement and a financing statement concerning the same security interest, the fee therefor shall be two dollars.

Respectfully,
WILLIAM B. SAXBE
Attorney General