

VOLUME NO. 40

OPINION NO. 60

CLERK AND RECORDER - Duty of county clerk and recorder to file continuation statement;
CONTINUATION STATEMENT - Duty of county clerk and recorder to file;
CONTINUATION STATEMENT - Extension of financing statement's effectiveness;
COUNTIES - Duty of clerk and recorder to file continuation statement;
FINANCING STATEMENT - Effect of continuation statement;
SECURED TRANSACTIONS - Duty of county clerk and recorder to file continuation statement;
SECURED TRANSACTIONS - Extension of financing statement's effectiveness;
MONTANA CODE ANNOTATED - Section 30-9-403;
OPINIONS OF THE ATTORNEY GENERAL - 38 Op. Att'y Gen. No. 114 (1980).

HELD: 1. A valid continuation statement becomes effective upon the conclusion of the five-year initial period during which a financing

statement is effective or upon the conclusion of any previous five-year extension of that initial period.

2. To be valid, continuation statements must be filed during the six-month period preceding conclusion of the initial five-year financing statement period or any extension thereof.
3. County clerk and recorders are not required to accept for filing continuation statements tendered other than during the six-month period preceding conclusion of the initial five-year financing statement period or any extension thereof.

30 July 1984

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion concerning three questions which I have stated as follows:

1. When does the five-year extension period provided under section 30-9-403(3), MCA, become effective if a valid continuation statement has been filed?
2. Is a continuation statement valid if it is filed more than six months before the end of the five-year period specified in section 30-9-403(2), MCA, or the end of a five-year extension period?
3. May a county clerk and recorder refuse to accept a continuation statement not tendered during the six months before the end of the five-year period specified in section 30-9-403(2), MCA, or the end of a five-year extension period?

Your questions must be answered with reference to section 30-9-403(3), MCA.

Section 30-9-403(2), MCA, provides that, generally, a financing statement is valid for five years after filing and that its effectiveness then lapses unless a continuation statement is filed. Section 30-9-403(3), MCA, then states in part:

A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in [section 30-9-403(2)].... Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in [section 30-9-403(2)] unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement....

A literal reading of section 30-9-403(3), MCA, clearly indicates that the five-year extension period effected by a valid continuation statement commences to run upon conclusion of the initial five-year financing statement period and any previous five-year extension period. Conversely, extension periods do not commence on the date a continuation statement is filed. Courts and attorneys general construing similar provisions of the Uniform Commercial Code in other states have consistently adopted this interpretation. See In re Davison, 29 B.R. 987, 989, 36 U.C.C. Rep. Serv. 717, 719-20 (Bankr. W.D. Mo. 1983); Chrysler Credit Corp. v. United States, 24 U.C.C. Rep. Serv. 794, 796 (E.D. Va. 1978); Op. Att'y Gen., 13 U.C.C. Rep. Serv. 971, 972 (Mich. 1973); Op. Att'y Gen., 14 U.C.C. Rep. Serv. 860, 863 (Ohio 1974); Op. Att'y Gen., 22 U.C.C. Rep. Serv. 266, 267-68 (N.C. 1977). The Michigan Attorney General has thus stated that:

[I]n plain language the Legislature has manifested its intent that upon filing of a continuation statement the effectiveness of the financing statement is continued for five years after the last date to which the filing was effective and not the date of the filing

of the continuation statement. Upon timely filing of succeeding continuation statements, the effectiveness of the original financing statement is continued for a period of five years from the expiration of the original financing statement and for five-year periods thereafter.

13 U.C.C. Rep. Serv. at 972.

A literal reading of section 30-9-403(3), MCA, also compels the conclusion that, to be effective, a continuation statement must be filed during the six-month period preceding termination of the original five-year financing statement period or any five-year extension of that original period. Any other reading of section 30-9-403(3), MCA, renders the six-month period a mere surplusage--a result inconsistent with accepted rules of statutory construction. In re Wilson's Estate, 102 Mont. 178, 193, 56 P.2d 733, 736 (1936); Continental Oil Co. v. Board of Labor Appeals, 178 Mont. 143, 151, 582 P.2d 1236, 1241 (1978). Again, other attorneys general considering this issue have similarly concluded. Op. Att'y Gen., 12 U.C.C. Rep. Serv. 1251, 1252 (Iowa 1973); Op. Att'y Gen., 14 U.C.C. Rep. Serv. at 863; Op. Att'y Gen., 22 U.C.C. Rep. Serv. at 267. Consequently, any continuation statement filed outside the six-month period does not extend the effectiveness of the financing statement.

Last, county clerk and recorders are not required to accept for filing continuation statements outside the six-month period specified in section 30-9-403(3), MCA. See Op. Att'y Gen., 14 U.C.C. Rep. Serv. at 863; Op. Att'y Gen., 22 U.C.C. Rep. Serv. at 268. Any other conclusion would obligate county clerk and recorders to engage in meaningless acts. Cf. 38 Op. Att'y Gen. No. 114 (1980) (clerk and recorder has no duty to file "common law" lien).

THEREFORE, IT IS MY OPINION:

1. A valid continuation statement becomes effective upon the conclusion of the five-year initial period during which a financing statement is effective or upon the conclusion of any previous five-year extension of that initial period.

2. To be valid, continuation statements must be filed during the six-month period preceding conclusion of the initial five-year financing statement period or any extension thereof.
3. County clerk and recorders are not required to accept for filing continuation statements tendered other than during the six-month period preceding conclusion of the initial five-year financing statement period or any extension thereof.

Very truly yours,

MIKE GREELY
Attorney General