

**OPINION
75-208**

August 15, 1975 (OPINION)

Mr. Thomas A. Dahle
Assistant State's Attorney
Renville County
Mohall, ND 58761

Dear Mr. Dahle:

This is in response to your letter of 4 August 1975 with regard to the Uniform Commercial Code.

You call our attention to the provision of Section 41-09-43 of the North Dakota Century Code, wherein subsection 3 states:

There shall be no fee for filing and indexing a termination statement including sending or delivering the financing statement.

You state that Section 41-09-43 as amended, however, would seem to indicate that a filing fee of \$3.00 is required for a statement of release. You state further that the most recently referred to above presents a possible ambiguity in that the filing fee of \$3.00 could refer only to statement of release when accompanied by a separate written statement of assignment. We differ with you on this point, so will designate as question A to be answered herein the following:

- A. Does the \$3.00 fee specified in section 41-09-45 of the 1975 Supplement to the North Dakota Century Code apply only to a statement of release when accompanied by a separate written statement of assignment?

Your stated questions are:

1. Is a termination statement the same as a statement of release?
2. Which of the two sections, 41-09-43 or 41-09-45 would govern the Register of Deeds as to the amount to be charged by him for the filing of a termination statement or signed statement of release?"

In response to question A, the \$3.00 fee specified in section 41-09-45 of the 1975 Supplement to the North Dakota Century Code applies to any statement of release whether or not same is accompanied by a separate written statement of assignment. This is quite clearly illustrated by an examination of the legislative history of the statute through North Dakota's statute books, as follows.

If you would look to Section 41-09-45 of the North Dakota Century Code as contained in the basic volume or Section 31 of Chapter 98 of the 1967 Session Laws, you will note that same provides for a basic

one dollar fee for filing and noting such a statement of release without any mention of assignments. (It is interesting to note that the original 1965 adoption of the Uniform Commercial Code provided there should be no fee for such filing and noting, however, this is only of historical value at this time.)

We would assume that persons dealing with the Uniform Commercial Code were having problems with the application of said Section 41-09-45, where the person "releasing" was not the secured party of record. The 1973 Legislative Assembly came up with the solution to this problem by specifically requiring that a statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment, and specifically requiring that the statutory provision as to such assignments, including payment of the required fee specified in that statute be complied with. However the 1973 Legislative Assembly still required that the basic fee of one dollar be paid for the filing and noting of the statement of release. (See Section 29 of Chapter 343 of the 1973 Session Laws.) Thus as Section 41-09-44 and Section 41-09-45 are shown in the 1973 Supplement to the North Dakota Century Code, the fee for filing such release would be one dollar, plus another dollar if not on standard form, plus 50 cents for each additional name required to be indexed, plus a basic two dollar fee for the assignment, plus a dollar if nonstandard form is used, plus 50 cents for each additional name against which same is required to be indexed. The only 1975 change in the statute is changing basic fee to three dollars standard form, four dollars nonstandard form and eliminating the indexing charges from that statute. On such basis we would conclude that the three or four dollar charge is for the release whether or not accompanied by assignment or assignments.

In response to your first stated question, while we would tend to agree that the legal effect of both a termination statement and a full release would in many instances be the same, there are substantial differences in the statutory language with regard to same. Thus Section 41-09-45 indicates that the secured party may release all or a part of the collateral, whereas Section 41-09-43 would appear to indicate that the entire secured obligation plus any commitments as to future obligations have terminated. Section 41-09-45 would appear to be optional, whereas Section 41-09-43 would appear to indicate that the debtor can force furnishing of the termination statement, and the secured party can be penalized for failing to file or send same. On such basis we would conclude that a termination statement under this state's Uniform Commercial Code, is not the same as a statement of release.

In response to your second stated question, 41-09-43 would govern the register of deeds as to the amount to be charged by him for the filing of a "termination statement" by its language - "There shall be no fee for filing and indexing a termination statement, including sending or delivering of the financing statement." Section 41-09-45 would govern the register of deeds as to the amount to be charged by him for the filing of a release by its language that: "The uniform fee for filing and noting such a statement of release shall be three dollars, if the statement is in the standard form prescribed by the filing officer and otherwise shall be four dollars."

To generally comment on same we note that "Anderson on the Uniform Commercial Code", Second Edition, copyright 1971 indicates the basic statutory provisions recommended as to fees for these sections to be as follows:

The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be \$_____.

The uniform fee for filing and noting such a statement of release shall be \$_____.

We note an almost infinite variation on fees indicated by Anderson as adopted by the various states. Thus we note that Anderson indicates that South Dakota has no fee for either of such instruments.

We would assume that North Dakota's requirement of a substantial fee for releases and no fees for termination statements is going to result in both debtors and secured creditors preferring in the usual instance to use the "termination statement" over the "release." In view of the differences in statutory requirements as to the two types of instruments, as well as the differences inherent in language indicating that the one is an affirmative statement that the transaction has terminated and that the other merely indicates that the secured creditor no longer intends to hold the collateral, we would assume that the register of deeds will have to determine whether any particular instrument offered is a "termination statement" or a "release" in determining whether or not a fee is to be charged. We would assume that in usual circumstances he could make such determination on the basis of whether the document is entitled "release" or "termination statement." However because of some of the statutory differences, such as for example, that the release can be partial and the termination statement cannot, he may also in some instances have to go into the body of the instrument.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General