

Office of the Attorney General
State of North Dakota

Opinion No. 83-33

Date Issued: August 18, 1983

Requested by: Kent Jones
Commissioner
North Dakota Department of Agriculture

--QUESTION PRESENTED--

Whether oral information provided to a merchant by a register of deeds pursuant to Section 11-18-01(8) of the North Dakota Century Code provides protection to a buyer of farm products without written confirmation after receipt of the required fee.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that oral information provided to a merchant by a register of deeds pursuant to Section 11-18-01(8), N.D.C.C., does not provide protection to a buyer of farm products without written confirmation after receipt of the required fee.

--ANALYSIS--

Section 11-18-01(8), N.D.C.C., reads as follows:

11-18-01. REGISTER OF DEEDS' DUTIES--RECORDING INSTRUMENTS--ABSTRACTS--RECORDING BRANDS. The register of deeds shall:

8. Furnish upon written or telephonic request to merchants, as referred to in subsection 7 of section 41-09-28, the information contained in financing statements filed to perfect a security interest pursuant to chapter 41-09 when the collateral is farm products, and to provide written confirmation of the oral information provided upon receipt of a fee which shall be the same as for recording that instrument.

It is clear that Subsection 8 requires a register of deeds to furnish merchants (as defined in Subsection 7 of Section 41-09-28, N.D.C.C.) the information contained in the financing statements filed with his or her office to perfect a security interest in farm products. The request for this information by the merchant can be made in writing or by

telephone. When the request is made by telephone, the register of deeds shall orally provide the information over the telephone. When the request is made in writing, the register of deeds has no obligation to telephone the merchant making the request to communicate the information orally.

Any written confirmation of the orally provided information can only be made after the required fee has been paid. Since a written request will ordinarily result in a written reply, the same rule applies and no written confirmation to a written request can be provided without the receipt of the required fee.

Orally provided information without written confirmation provides no statutory protection to the merchant. Section 41-09-28(4)-(8), N.D.C.C., provides to a merchant who purchases or to a commission merchant who sells farm products for another relief from liability where the seller previously used these farm products as collateral to secure a loan of which the merchant was not aware. Section 41-09-28(7), N.D.C.C., specifies four conditions, one of which must be satisfied by a merchant before the merchant will take free of a security interest created by the seller. Section 41-09-28(7)(b), N.D.C.C., provides as follows:

7. A merchant who purchases from or a commission merchant who sells farm products for another for a fee or commission takes free of security interest created by the seller if:
 - b. In the case where the seller disclosed no security interests, the merchant has requested information from the register of deeds in the counties of the sellers' residences over the five years prior thereto, as disclosed in the certificate, (or from the office of secretary of state if section 41-09-40 provides for filing in that office) as to the existence of financing statements naming the seller, and has received from the filing officer a certificate verifying disclosures obtained by such inquiry, and has entered on the check or draft the names of any secured parties named in the certificate as payees with the seller;

Therefore, written confirmation of oral information provided to a merchant pursuant to Section 11-18-01(8), N.D.C.C., assures the protection afforded to a merchant by Section 41-09-28(7)(b). Oral information without written confirmation provides no protection.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Allan Benson
Assistant Attorney General

Date issued: August 24, 1983

Requested by: Kent Jones
Commissioner
North Dakota Department of Agriculture

Whether oral information provided to a merchant by a register of deeds pursuant to Section 11-18-01(8) of the North Dakota Century Code provides protection to a buyer of farm products without written confirmation after receipt of the required fee.

It is my opinion that oral information provided to a merchant by a register of deeds pursuant to Section 11-18-01(8), N.D.C.C., does not provide protection to a buyer of farm products without written confirmation after receipt of the required fee.

Section 11-18-01(8), N.D.C.C., reads as follows:

11-18-01. REGISTER OF DEEDS' DUTIES--RECORDING INSTRUMENTS--ABSTRACTS--RECORDING BRANDS. The register of deeds shall:

Furnish upon written or telephonic request to merchants, as referred to in subsection 7 of section 41-09-28, the information contained in financing statements filed to perfect a security interest pursuant to chapter 41-09 when the collateral is farm products, and to provide written confirmation of the oral information provided upon receipt of a fee which shall be the same as for recording that instrument.

It is clear that Subsection 8 requires a register of deeds to furnish merchants (as defined in Subsection 7 of Section 41-09-28, N.D.C.C.) the information contained in the financing statements filed with his or her office to perfect a security interest in farm products. The request for this information by the merchant can be made in writing or by telephone. When the request is made by telephone, the register of deeds shall orally provide the information over the telephone. When the request is made in writing, the register of deeds has no obligation to telephone the merchant making the request to communicate the information orally.

Any written confirmation of the orally provided information can only be made after the required fee has been paid. Since a written request will ordinarily result in a written reply, the same rule applies and no written confirmation to a written request can be provided without the receipt of the required fee.

Orally provided information without written confirmation provides no statutory protection to the merchant. Section 41-09-28(4)-(8), N.D.C.C., provides to a merchant who purchases or to a commission merchant who sells farm products for another relief from

liability where the seller previously used these farm products as collateral to secure a loan of which the merchant was not aware. Section 41-09-28(7), N.D.C.C., specifies four conditions which must be satisfied by a merchant before the merchant will take free of a security interest created by the seller. Section 41-09-28(7), N.D.C.C., provides as follows:

7. A merchant who purchases from or a commission merchant who sells farm products for another for a fee or commission takes free of security interest created by the seller if:
 - a. The merchant has complied with the requirements of subsection 4;
 - b. In the case where the seller disclosed no security interests, the merchant has requested information from the register of deeds in the counties of the sellers' residences over the five years prior thereto, as disclosed in the certificate, (or from the office of secretary of state if section 41-09-40 provides for filing in that office) as to the existence of financing statements naming the seller, and has received from the filing officer a certificate verifying disclosures obtained by such inquiry, and has entered on the check or draft the names of any secured parties named in the certificate as payees with the seller;
 - c. The merchant does not have actual knowledge at the time of transaction of the existence of security interests; and
 - d. The merchant maintains records of such actions to support any criminal proceedings against the seller for violation of section 12.1-23-08.

Therefore, written confirmation of oral information provided to a merchant pursuant to Section 11-18-01(8), N.D.C.C., assures the protection afforded to a merchant by Section 41-09-28(7)(b). Oral information without written confirmation provides no protection.

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Allan Benson
Assistant Attorney General