

Opinion No. 62-132

October 23, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A Donnelly, Assistant Attorney General

TO: Charles N. Morris, Assistant District Attorney, Carlsbad, New Mexico

QUESTION

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Is it necessary under the provisions of the Uniform Commercial Code that security agreements and other instruments which are offered for filing, be executed in ink or with an indelible pencil, or is the execution or making of such instruments by means of a lead pencil sufficient to make the same eligible for filing in the County Clerk's office?

CONCLUSION

Instruments offered for filing under the provisions of the Uniform Commercial Code are not required to be either made or written in ink or with an indelible pencil, but such may be either made or executed by lead pencil, or by any other methods of writing or execution.

OPINION

ANALYSIS

The question posed above is governed by the provisions of Section 50A - 1 - 201 (46), N.M.S.A., 1953 Compilation. This Section provides:

"Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form."

Under the Official Code Comment to Section 1-201 (46) of the Uniform Commercial Code, recognition is given to the fact that under the Code the term "writing" has been broadened in application to include any writing conveying the meaning intended by the individuals executing such instrument and which is placed in tangible form.

The term "writing" has generally been interpreted by the courts to embrace writing by a pencil, ink, printing, engraving, lithographing and any other mode of representing words and letters. **Clossen v. Stearns**, 4 Vt. 11, 23 Am. Dec. 245; **Fletcher v. Wall**, 50 NE 230, 172 Ill. 426, 40 L.R.A. 617; **Ames v. Schurmeier**, 9 Minn. 221; **Geary v. Physic**, 5 Barn. & C. 234; **Clason v. Bailey**, (N.Y.) 14 Johns 484; **Hill v. Scott**, 12 Pa. 168.

As defined in **Black's Law Dictionary**, 4th Ed., the term "writing" is construed to mean:

"The expression of ideas by letters visible to the eye. *Clason v. Bailey*, 14 Johns (N.Y.) 491. The giving an outward and objective form to a contract, will, etc., by means of letters or marks placed upon paper, parchment, or other material substance."

In **Cyclopedic Law Dictionary**, 3d. Ed., "written" is construed to include "words traced with a pen, stamped, printed, engraved or made legible by any other device."

Examination of the general statutes relating to recording or filing of public records generally, indicates specific legislative limitation upon the materials and type of ink which must be utilized by public officials charged with maintaining or preserving public records. Section 71-1-3, N.M.S.A., 1953 Compilation, governing the filing or recording of instruments generally, does not specify the manner or means by which such instruments must be fashioned. Section 71 - 1 - 5, N.M.S.A., 1953 Compilation, provides that it is the duty of county clerks to use either "a good grade of non-fadeable permanent black ink or a good grade of black record typewriter ribbon in recording all instruments of writing which by law they are required to record." Section 71-1-6, N.M.S.A., 1953 Compilation makes any failure to comply with Section 71 - 1 - 5, a misdemeanor. Section 71-6-13, N.M.S.A., 1953 Compilation specifies that all paper, ink, and other materials used in public offices for the purpose of permanent records shall be of durable quality. The statutory provisions noted above, however, have application to public officers and their duties toward public records, and have no application to instruments submitted by private parties and which are sought to be filed under the provisions of the Uniform Commercial Code.

Business expediency would seem to dictate that instruments sought to be filed under the Uniform Commercial Code be written or made utilizing materials which are permanent or durable in nature, and that particularly signatures authenticating such instruments be placed thereon with durable ink or markings in order to prevent alteration of such instruments or to protect such instruments from fading or becoming illegible. These factors however, while constituting good business practice, are not controlling or determinative of the issue of whether an instrument may be accepted for filing under the Uniform Commercial Code.

Under the provisions of the Uniform Commercial Code, the general provisions of the New Mexico Statutes relating to the acceptance of instruments for filing, and the authorities above cited, it is evident that no prescribed or fixed requirements exist, making the use of ink, indelible pencil, typewriting or printing essential prerequisites to constitute a valid instrument under the Uniform Commercial Code or a condition precedent to entitle an instrument to be accepted for public filing. See also our former Attorney General Opinions No. 62-3, dated January 3, 1962, and 62-126, dated October 9, 1962. All that is required under the provisions of the Uniform Commercial Code to comply with the provisions of the Statutes cited, is that the instrument submitted for filing thereunder constitute a "writing" within the meaning specified herein.