

## **Opinion No. 64-42**

March 30, 1964

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

**TO:** Mr. Louis E. DePauli, District Attorney, Eleventh Judicial District, P. O. Box 268, Gallup, New Mexico

### **QUESTION**

#### QUESTION

Does paragraph 2 of Section 50A-9-404 N.M.S.A., 1953 Compilation as construed in conjunction with other relevant sections (§ 50A-9-407 N.M.S.A., 1953 Compilation) require the filing clerk to return to the secured party the original termination statement along with previously filed financial statements, continuation statements, etc., when the same are terminated, or should the filing clerk keep the original termination statement on file because a filing fee has been paid for the filing thereof, and further, for the reason that paragraph 2 of Section 50A-9-407 imposes upon the filing clerk the duty of furnishing upon request of any person a photocopy of any instrument filed with the filing office?

#### CONCLUSION

The original termination statement should be retained by the filing officer. Upon receipt by the filing officer of a termination statement with the proper filing fee, he should file such instrument, remove from the files and mark "terminated" the financing statement and any continuation statement, statement of assignment or statement of release relevant thereto, and send or deliver such instruments to the secured party of record.

### **OPINION**

#### ANALYSIS

The Uniform Commercial Code contemplates that when there is no longer any outstanding secured obligation or commitment to make advances under any agreement, or obligation to incur obligations or otherwise give value, that the debtor may demand of the secured party in writing a statement that there no longer exists any security interest under a financing statement.

Section 50A-9-404 N.M.S.A., 1953 Compilation, provides that after demand by the debtor in writing for a termination statement from the secured party, it is mandatory that the secured party send a termination statement to the debtor (if all debts and obligations are satisfied) within ten days after proper demand or he shall "be liable to the debtor for

one hundred dollars, and in addition for any loss caused to the debtor by such failure." Section 50A-9-404, supra, further provides:

"(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark 'terminated' and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto."

The above statute does not require that the termination statement be removed from the filing records and returned with the other documents. As stated in Anderson's Commercial Code, Vol. 2, at page 629, the duties of a filing officer upon receipt of a termination statement are as follows:

"Upon presentation of the termination statement (accompanied by a tender of the proper fee), the filing officer must make a notation of the termination in the filing index. He is then required to remove from the files the financing statement, and any related papers (such as a continuation statement, statement of assignment, or statement of release), mark the statement 'terminated,' and send or deliver all such papers to the secured party."

In our prior Attorney General's Opinion No. 62-1, dated January 3, 1962, the duty to return the instruments to the secured party was deemed mandatory, however, it is clear that the termination statement should be retained by the filing officer and not returned with the other instruments since such documents evidence the fact of termination under such statute.