

Opinion No. 87-17

April 30, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Lyn Hebert, Assistant Attorney General

TO: Ms. Rebecca Vigil-Giron, Secretary of State, Legislative Executive Bldg., Santa Fe, New Mexico 87503

QUESTIONS

Whether the secretary of state is required to perform searches of filed documents related to the Uniform Commercial Code on request.

CONCLUSIONS

No.

ANALYSIS

In 1961 the legislature of New Mexico adopted the Uniform Commercial Code (UCC) with some modifications and omissions from the model act. The legislature did not adopt a provision contained in the model act that required the secretary of state to perform a search of filed UCC documents on request. See Laws of 1961, Chap. 96, Sect. 9-407. In 1985 the legislature amended this section of the UCC to include the requirement that the secretary of state on request issue a certificate whether the UCC files contained any effective financing statement on a particular debtor. See Laws of 1985, Chap. 193, Sect. 32. The following year the legislature again amended this section to delete the search provision that the legislature in the prior year had included. See Laws of 1986, Chap. 36, Sect. 5. This section is codified as Section 55-9-407 NMSA 1978. The legislative action of 1985 resulted in a search provision that was in effect less than a year. By repealing this provision in 1986, the legislature relieved the secretary of state from any duty of performing searches of UCC filings on request.

In 1962 this office issued an opinion to a county clerk who had inquired as to necessity of the county clerk performing UCC searches. See A.G. Op. 62-20. The opinion concluded that a county clerk had no legal duty to conduct searches of UCC filings at the request of private persons. The opinion noted that, unlike the situation for county clerks, there was a statutory provision allowing the secretary of state to charge a fee for searching the records of that office. Section 8-4-4 NMSA 1978 sets forth the various fees that can be charged by the secretary of state, including a \$2.00 per hour fee for the search of records. As this statute was enacted in 1953, eight years before the adoption of the UCC in New Mexico, the search fee could not have included a search of UCC filings. The legislature acted specifically on the UCC search provision in 1985 and 1986,

but the legislature did not reference the search provision to the statutory fee provision or provide for any fee to be charged. Consequently, we do not believe that the legislature, merely through the statutory fee provision, has mandated the secretary of state to perform UCC searches.

Respectfully submitted,

ATTORNEY GENERAL

HAL STRATTON Attorney General