OFFICIAL OPINION NO. 67

November 23, 1964

Hon. Charles O. Hendricks
Secretary of State
201 State House
Indianapolis, Indiana

Dear Mr. Hendricks:

You have requested an Official Opinion relative to the duties of a county recorder in connection with the provisions of the Intangibles Tax Law as found in the Acts of 1933, Ch. 81, Sec. 29, as amended, as found in Burns' (1961 Repl.), Section 64-2731, which reads as follows:

"No instrument securing the payment of any debt evidenced by any intangible as defined by this act, nor any judgment herein defined as an intangible, nor any release satisfaction or assignment of such instrument or judgment shall be admitted to record in this state until all tax interest and penalty then due, as provided in this act, has been paid upon such intangible so secured or such judgment so satisfied, released or assigned, unless satisfactory proof be made in accord with rules established by the commission that no tax is due upon such intangible or judgment."

Your specific questions in regard to the duty imposed upon a recorder by the provisions of the Acts of 1933, Ch. 81, Sec. 29, wherein a recorder is required to determine that all intangibles tax, interest and penalty then due have been fully paid before the recorder can admit an intangible to record, are as follows:

"1. What is the duty of the County Recorder upon the presentation of a financing statement under the Uniform Commercial Code?

"2. What are the duties of the County Recorder when presented a security agreement?

"3. What are the duties of the County Recorder when other evidence which meets the legal requirements..."
In your questions you refer to the Uniform Commercial Code and certain instruments defined therein such as "financing statement" and "security agreement." The Uniform Commercial Code was adopted by the Legislature of the State of Indiana and was so enacted into law by Acts of 1963, Ch. 317.

In order to perfect a "security interest," which is created under the Uniform Commercial Code, a "financing statement" must be filed.

See: Acts of 1963, Ch. 317, Sec. 9-302 (1) as found in Burns' (1964 Repl.), Section 19-9-302 (1).

The Acts of 1963, Ch. 317, Sec. 9-401, as found in Burns' (1964 Repl.), Section 19-9-401, sets out the proper places to file in order to perfect the "security interest" upon various types of properties affected by said security instruments.

We see therefore that the Uniform Commercial Code provides that a "financing statement" must be filed in order to create a security interest in the secured party. The Acts of 1963, Ch. 317, Sec. 9-402, as found in Burns' (1964 Repl.), Section 19-9-402, sets out the formal requisites of a financing statement and reads as follows:

"(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.
“(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

“(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

“(b) proceeds under section [19-]9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

“(c) collateral under a security agreement signed by the debtor and authorizing the secured party to file a financing statement. Such a financing statement must state that it is filed in accordance with a security agreement signed by the debtor and authorizing the filing of the statement.

“(3) A form substantially as follows is sufficient to comply with subsection (1)

Name of debtor (or assignor) ______________________________________
Address ________________________________________________________
Name of secured party (or assignee) ________________________________
Address ________________________________________________________

1. This financing statement covers the following types (or items) of property: (describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe real estate) ____________________________________________

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe real estate) ____________________________________________

4. (If proceeds or products of collateral are claimed) Proceeds—Products of the collateral are also covered.
Signature of debtor (or assignor) ________________
Signature of secured party (or assignee) __________

"(4) The term 'financing statement' as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

"(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

"(6) The provisions of Section 29 of Chapter 81 of the Acts of 1933 commonly known as the Intangibles Tax Act, as amended by Section 3 of Chapter 51 of the Acts of 1945 (Section 64-2731 Burns Indiana Statutes, Repl. 1961) and the provisions of Chapter 110 of the Acts of 1959 requiring the identification of draftsmen of instruments transferring interests in real estate (Section 39-3249 Burns Indiana Statutes, Supp. 1962) shall not apply to filings under this Act.” (Our emphasis)

Subsection (6) of Section 9-402, very clearly removes the duty imposed upon the recorders by Sec. 29 of Ch. 81 of the Acts of 1933, supra, relative to their determining that the intangibles tax has been paid before they are required to admit to record a “financing statement” required to be filed under the provisions of the Uniform Commercial Code. Burns' 9-402, supra, also provides that a copy of the “security agreement” is sufficient as a “financing statement,” if said “security agreement” contains the information which is required to be contained in a “financing statement” and is signed by both parties. Therefore, a “security agreement” may be filed under the provisions of the Uniform Commercial Code and when so filed, a recorder is required to admit it to record without determining whether or not there is any intangibles tax due and owing against said instrument.

In answer therefore, to your questions Nos. (1) and (2), it is my opinion that when a secured party is required to file a financing statement, or security agreement, under the pro-
visions of the Uniform Commercial Code in order to perfect a security interest, the respective county recorders are not required to follow the provisions of Sec. 29 of Ch. 81 of the Acts of 1933, supra, and said recorders are under no duty to require the affixing of intangibles tax stamps to said instruments before admitting them to record.

In answer to your third question, I can find no provisions in the Uniform Commercial Code for any instruments to be filed, other than "financing statements" or "security agreements" which would come within the filing provisions of said Code. It would appear that the legal requirements necessary to evidence a secured transaction are a properly executed "financing statement" or a properly executed "security agreement" and that no other evidence would suffice to meet the legal requirements of the act. If any instrument meets the legal requirements of the act, it would then be a "financing instrument" or a "security agreement."

I feel that your third question answers itself in that if an instrument meets the legal requirements for evidencing a secured transaction under the Uniform Commercial Code, said instrument would then be within the definition of a "financing statement" or "secured agreement."

OFFICIAL OPINION NO. 68

November 24, 1964

Hon. Walter H. Barbour
State Representative
5105 North Shadeland
Indianapolis, Indiana

Dear Representative Barbour:

This is in response to your request for my official opinion as to the interpretation of certain language in respect to the two cents’ tax levy for the purpose of operating and maintaining 4-H club buildings as found in the Acts of 1877, Ch. 1, Sec. 2, as last amended by the Acts of 1953, Ch. 108, Sec. 2, as found in Burns’ (1964 Repl.), Section 15-315. Your letter states, in part: