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Geoffrey S. Connor
ASSISTANT SECRETARY OF STATE
State of Texas

October 9, 2001

RQ-0449-9

The Honorable John Cornyn
Attorney General
Price Daniel Sr. Building
Austin, Texas 78701

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OPINION COMMITTEE

Re: Request for an opinion interpreting Section 9.707(c) of the Uniform Commercial Code regarding the place of filing of a termination statement for a pre-effective date financing statement.

Dear General Cornyn:

In 1999, the Texas Legislature adopted a modified version of the proposed Article 9 of the Uniform Commercial Code ("UCC") amending Chapter 9 of the Tex. Bus. & C. Code, effective July 1, 2001, in Acts 1999, 76th Leg., ch. 414 § 1.01. This enactment included, in sections 3.01 through 3.06, transition provisions from the former Article 9 to Revised Article 9. In 2001, the 77th Texas Legislature reenacted the transition provisions with additional amendments as Subchapter G Chapter 9, Tex. Bus. & C. Code. The amendments included the addition of Section 9.707, which reads as follows:

Sec. 9.707. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

- (a) In this section, "pre-effective-date financing statement" means a financing statement filed before the revision takes effect.
- (b) After the revision takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Subchapter C. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.
- (c) Except as otherwise provided in Subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the revision takes effect only if: (1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9.501; (2) an amendment is filed in the office specified in Section 9.501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9.706(c); or (3) an initial financing statement that provides the information as amended and satisfies Section 9.706(c) is filed in the office specified in Section 9.501.

Post Office Box 12697, Capitol Station
Austin, Texas 78711
512-463-5770

- (d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Sections 9.705(d) and (f) or Section 9.706.
- (e) *Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the revision takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9.706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Subchapter C as the office in which to file a financing statement.*

Act of May 17, 2001, S.B. 433, § 23, 77th Leg., R.S. (to be codified as an amendment to TEX. BUS. & C. CODE, ch 9) (Emphasis added).

Apparently, there is confusion over whether a termination statement terminating a pre-effective date financing statement originally filed with the county filing officer should be filed with the county filing officer or with the Office of the Secretary of State. The confusion results from different interpretations of the language underlined above in subsection (e).

A “pre-effective-date financing statement” means a financing statement filed before the revisions to Chapter 9 of the UCC took effect on July 1, 2001. Prior to July 1st, the law provided as follows:

§ 9.401. Place of Filing; Erroneous Filing; Removal of Collateral

(a) The proper place to file in order to perfect a security interest is as follows:

- (1) when the collateral is consumer goods, then in the office of the County Clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the County Clerk in the county where the goods are kept;
- (2) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, then in the office of the County Clerk in the county where a mortgage on the real estate would be filed or recorded;
- (3) in all other cases, in the office of the Secretary of State.

It appears to the Secretary of State that a pre-effective-date financing statement may be terminated by filing a termination statement in the original filing office, either the county clerk's office or the Secretary of State's office, unless a new initial financing statement relating to the pre-effective date financing statement has been filed under Revised Article 9.

Some local county filing officers are refusing to accept any U.C.C. filings after July 1, 2001, including termination statements related to pre-effective-date financing statements originally filed with the county office. Apparently, there is some reliance on contrary conclusions reached by the Joint Task Force on Revised Article 9 Enactment Process as stated in a paper titled Revised U.C.C. Article 9 Enactment Guide, 2nd Edition, an unpublished guide on file with the American Bar Association. This guide is not specific to the enactment of the law in Texas and we think reaches a conclusion not consistent with 9.707(e).

We respectfully request your assistance in interpreting the language so that there can be uniformity of application and certainty as to which filing office is the proper place for filing termination statements. Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink that reads "G.S. Connor". The signature is written in a cursive, slightly stylized font.

Geoffrey S. Connor