

MAINE STATE LEGISLATURE

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February 25, 1965

Kenneth M. Curtis

Secretary of State

Jerome S. Matus, Assistant

Attorney General

Information to Public

FACTS:

You informed this Department by memorandum dated January 25, 1965 that the present policy of your Office is to request that any of the public coming into your Office to search UCC filings complete a call slip. The clerks handling the UCC filings will then search the files and remove all those found under the exact name listed. These are handed the person(s) requesting the search to look at and to copy if they wish. At present no telephone inquiries are answered. Copies and certificates are issued upon request. This same policy exists in much the same manner on all personal requests for information made at the counter. However, telephone inquiries are answered on other matters. It has been felt that telephone calls on UCC might be much more time consuming and the margin for incorrect information much higher. It is the opinion of your Office that the housekeeping problem would be a task if the public could search the files at their pleasure. There is nothing your Office considers private, all records are available to the public. It is merely a matter of the clerks procuring the information for the public.

By memorandum dated February 2, 1965, you informed this Department that an additional service which will be offered the public on March 1st is a numerical listing of all financing statements filed in your Office. This listing is being prepared at present, beginning with number one and continuing on by consecutive number, and will contain the name of the debtor, secured party or assignee of record, number, date of filing and brief description of the collateral.

Copies of this listing will be available to the public, upon request, at a fee of \$.50 per page. Your Office intends to keep a notebook containing the complete listing on the counter for public inspection. It is felt that such a numerical listing, prepared by a clerk not involved with the recordings, will be an almost foolproof method of making the filings open to the public.

QUESTION:

Do the procedures outlined in these two memorandums sufficiently comply with the Maine Uniform Commercial Code and 1 MRS § 405?

ANSWER:

See opinion.

OPINION:

1 M.R.S. § 405 provides as follows:

"§ 405. Minutes and records available for public inspection. Every citizen of this State shall, during the regular business or meeting hours of all such bodies and agencies, have the right to inspect all public records, including any minutes of meetings of such bodies or agencies as are required by law, and to make memoranda abstracts or photographic or photostatic copies of the records or minutes so inspected, except as otherwise specifically provided by statute." (Emphasis supplied)

Note in 1 M.R.S. § 405 the references to "such bodies or agencies". The "bodies or agencies" are those "bodies or agencies" referred to in 1 M.R.S. § 402.

"§402. The term 'public proceedings' as used in this subchapter shall mean the transactions of any functions affecting any or all citizens of the State by any administrative or legislative body of the State, or of any of its counties or municipalities, or of any other political subdivision of the State, which body is composed of 3 or more members, with which function it is charged under any statute or under any rule or regulation of such administrative or legislative body or agency." (Emphasis supplied)

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Since the Secretary of State's Office is not "any administrative or legislative body of the State, or of any of its counties or municipalities, or of any other political subdivision of the State, which body is composed of 3 or more members," the provisions of 1 M.R.S. § 405 do not apply to filings maintained by the Secretary of State's Office even though such filings are required by the Maine Uniform Commercial Code.

Your procedures do not reveal any violation of provisions of the Maine Uniform Commercial Code.

You have the right to make reasonable restrictions as to how public records are made available to members of the public. "Without doubt, reasonable restrictions and conditions may be imposed with respect to the right to use public records."
45 Am. Jur. § 16. Records and Recording Laws.

You are a custodian of public records and should be guided in establishing regulations for their use by the following:

"The custodian of public records must necessarily have control of his office and of the records, and must have some discretion to exercise as to the manner in which persons desiring to inspect, examine, and copy the records may exercise their rights. He must transact all current business of the office and allow all persons reasonable facilities to exercise their rights in his office. The right of inspection then must necessarily be exercised subject to such reasonable regulations as the recorder sees proper to make for the orderly government of his office, and cannot be insisted on to an unreasonable extent, at unreasonable hours, or during a time when the records are in the rightful or proper use of any other person. . . ."
45 Am. Jur. § 176. Records and Recording Laws.

The procedures you have established do not violate these guide lines and I am, therefore, of the opinion that they are proper procedures.