

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 MAY 4 1977

STATE OF MAINE

Inter-Departmental Memorandum Date January 4, 1977

To Doris Hayes, Deputy Secretary of State
From Stephen Wessler, Staff Attorney Dept. Attorney General
Subject Requests for Information on UCC Filings

FACTS:

Past Policy of Secretary of State

In January 1965 the Secretary of State set forth the policy of his office regarding requests for information on UCC filings. UCC filings were stored alphabetically by name of the debtor. Members of the public desiring such information were requested to fill out "call slips." "The clerks handling the UCC filings will then search the files and remove all those found under the exact name listed." Although members of the public were denied access to the alphabetical storage files, they were permitted to inspect the filings which clerks had removed. Memo from Secretary of State to Attorney General, January 15, 1965. See also In Matter of Reeco Electric Co., Inc., 19 UCC Rep. 947; Me. Op. Att'y Gen., 2 UCC Rep. 813 (1965).

The Secretary of State also compiled a numerical list in which filings were listed consecutively in the order in which they were filed. This list could be examined by members of the public.

Present Policy of Secretary of State

As explained by personnel of the Secretary of State, the office continues to use the "call slip" system. However, clerks do not continue the policy of searching only for filings under the exact name listed on the call slip. Rather, the clerks search for and report to the public all combinations of the debtor's corporate suffix, initials and/or first and middle names. Although members of the public still are not allowed direct access to the alphabetical files, they are allowed direct access to the numerical files (the numerical list is no longer compiled.)

Judge Gignoux's Opinion

In a recent Opinion of the Federal District Court for the District of Maine, Judge Gignoux commented that he had

... serious doubt whether the practices of the Secretary of State's Office [as expressed in the Secretary of State's 1965 memo]. . . are consistent with the requirement of the Code that financing statements be filed for 'public inspection', 11 Me. Rev. Stat. Ann. § 9-403(4) (Supp. 1975-76), language which clearly contemplates that interested parties must themselves be granted access to the files.

In re Reeco Electric Co., Inc., 19 UCC Rep. 947, 952.

Statutory Background

11 MRSA § 9-403(4) requires the filing officer to mark each financing statement with a consecutive number (the numerical file) and "hold the statement for public inspection." Although the section also requires the filing officer to maintain an index by debtor's name (the alphabetical file), the public inspection requirement is not repeated. The question of whether the public inspection requirement also applies to the alphabetical file, however, is rendered moot by the Maine Freedom of Access Law. 1 MRSA § 401 et seq (Supp. 1976). Sec. 408 of the law declares that all public records must be open to public inspection. UCC filings appear to fall within the definition of public records set forth in § 402(3). Therefore, pursuant to either § 408 and/or § 9-403(4), the public has a right to inspect UCC filings.

ISSUE:

What practices must the Secretary of State follow in handling requests for information on UCC filings, if those practices are to be consistent with 11 MRSA § 9-403(4) (Supp. 1976)?

CONCLUSION:

The Secretary of State, in order to handle requests for UCC filings in a manner consistent with 11 MRSA § 9-403(4) (Supp. 1976), must, either allow the public direct access to the files or (a) conduct a search equal in scope to the search that a diligent member of the public might himself conduct, and (b) permit members of the public with special needs to have direct access to the filings.

REASONING:

The right of public inspection granted by statute generally is subject to reasonable regulation designed to prevent loss or destruction of records, and undue interference with the operations of the filing office. See 1 MRSA § 408 (Supp. 1976); 66 Am. Jur.2d, Records and Recording Laws § 14, at 350 (1973); 76 C.J.S. Records, § 35 at 136 (1952). However, such regulations cannot result in the denial of the public's right to inspect. 66 Am. Jur.2d. Records and Recording Laws § 12, at 349 (1973).

(a) Diligent Search

A policy whereby the public is denied direct access to alphabetical listings reasonably guards against loss or destruction of records. However, such a policy cannot deprive the public of its right to inspect. If the employees of the Secretary of State search only for filings containing the "exact name" of the debtor,

certain filings may not be located and the public may effectively have its right to inspect denied. For example, if a financing statement is filed with an extra corporate suffix added to the debtor's name, a clerk strictly adhering to the "exact name" approach might not locate the statement unless the inquiring party listed the incorrect version of the debtor's name on the "call slip". The "exact name" approach, because it may effectively deny the public its right to inspect, is not consistent with § 9-403(4).

Members of the public should not be expected to list on the "call slip" all possible combinations of the debtor's name. The diligent inquirer, however, would search for all such combinations in the files. In order to avoid conflict with the public inspection requirement of § 9-403(4), the Secretary of State must conduct a search equal in scope to the search which a diligent inquirer would conduct. To the extent that the Secretary's present policy adopts this approach, that policy is consistent with § 9-403(4).*

Judge Gignoux's dicta in the Reeco case (quoted on p. 2 supra) suggests that the "public inspection" requirement in § 9-403(4) is tantamount to a grant of public access to the storage files. However, if an inquirer is permitted to physically inspect all filings in which he has an interest, access to the storage files becomes unnecessary and the "public inspection" requirement is satisfied. Neither 1 MRSA § 408 (Supp. 1976) nor 11 MRSA 9-403(4) (Supp. 1976) establishes a right of access to the storage files. The statutes only establish the right to inspect particular records or statements. In summary, if employees of the Secretary of State approximate the search that a diligent inquirer would conduct, then the employees may deny inquirers direct access to the filings. Such an approach permits the public to inspect filings of specific debtors; the approach only restricts the public's access to the storage files themselves.

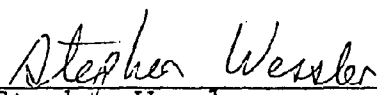
(b) Special Needs

The Secretary of State's policy prohibiting direct public access to UCC filings may violate § 9-403(4) if an inquirer has special needs which cannot be met through the "call slip" method. For example, a member of the public might desire to make a general search of the alphabetical

*Since Judge Gignoux commented in Reeco, supra, at 952, that the Secretary of State's office still followed the "exact name" approach, the office should issue a statement or memorandum explaining its present policy.

file in order to determine the level of financing in a particular type of business. Such an inquirer could not comply with the "call slip" system since he would not know the names of the debtors whose filings he would be reading. Since such a person's right to inspect can only be met by direct access, the Secretary must allow such access. Moreover, such an inquirer may desire to keep his reasons for seeking direct access to the files confidential, the Secretary cannot require the inquirer to justify his request for direct access. Such a requirement might discourage an inquirer from seeking direct access and thus effectively deny the inquirer his right to inspect. The Secretary, therefore, must allow an inquirer direct access to the storage file, whenever the inquirer states that he cannot or will not list specific names of debtors on the call slip. Moreover, the Secretary cannot require a member of the public to justify or explain his special need for direct access.

The Secretary, however, may impose reasonable regulations on the manner in which access is permitted. See 1 MRSA § 408 (Supp. 1976). Thus, the Secretary can limit the times when such searches can be made, establish the number of persons who can make such searches at one time and require such searches to be made under supervision. Finally, since many inquirers will not know that direct access is permitted to satisfy special needs, the Secretary must make available to all inquirers an explanation of its policy regarding UCC filings. The Secretary's explanation must state clearly that all inquirers are allowed direct access to the files in order to satisfy special needs, and that the Secretary may not compel inquirers to explain the nature of their special needs.



Stephen Wessler
Staff Attorney

SW:gr