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STATE OF MAINE

79-216

Inter-Departmental Memorandum Date December 31, 1979

To James Henderson, Deputy

Dept. Secretary of State

from Steven Wright, Assistant

Dept. Attorney General

Subject Filing of continuation statements

You have asked whether a continuation statement filed by a secured party at a time not provided for by statute continues the effectiveness of a filed financing statement. Specifically, you have asked whether a continuation statement which is filed more than 6 months prior to the expiration of the 5-year period during which the financing statement is effective causes the effectiveness of the original statement to continue for 5 more years. We answer in the negative.

The statute which pertains to your question appears clear and unambiguous. 11 MRSA §9-403(1) provides:

Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

Because the word "file" is used in the same manner within the same statutory provision in setting out the procedure for filing the continuation statement, we conclude that the procedure set forth in §9-403(1) for what constitutes filing of a financing statement controls the filing of continuation statements as well. 11 MRSA §9-403(3) provides, in pertinent part:

A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2).


* * *

Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2), unless another continuation statement is filed prior the such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statements. (emphasis added).

As indicated before, this language clearly shows that a continuation statement to be effective must be filed "timely". The time within which it may be filed is within 6 months prior to the expiration of the 5-year period which runs from the date of filing of the original financing statement.

Continuation statements filed earlier than 6 months prior to the expiration date should not be accepted by the Secretary of State.

If you have any further questions on this matter, feel free to contact me.


STEVEN F. WRIGHT
Assistant Attorney General

