

640302-1

CONSTITUTION: Revised.

COUNTIES: Register of Deeds – Fees.

UNIFORM COMMERCIAL CODE: Fees for filing.

County register of deeds who is paid a salary authorized by the board of supervisors is not entitled to retain fees collected by him in the discharge of duties reposed in him by the Uniform Commercial Code.

No. 4270

March 2, 1964.

Honorable Billie S. Farnum
Auditor General
The Capitol
Lansing, Michigan

You have requested an opinion in your letter of January 8, 1964. Your question has been rephrased in the following manner:

Can a register of deeds, who is on a salary basis of compensation, retain fees established for the abstracts of security interests under Act No. 174, P.A. 1962, which is known as the Uniform Commercial Code?¹

The Michigan Constitution of 1963 in Article VII, Section 9, provides:

“Boards of supervisors shall have exclusive power to fix the compensation of county officers not otherwise provided by law.”

Section 1 of Act 237, P.A. 1919, as amended,² provides in part as follows:

“The board of supervisors of each county in this state is hereby authorized and empowered to direct the payment to the * * * register of deeds * * * such salaries as said board may deem proper. *Such salaries may be fixed and determined * * * and the same shall be compensation in full for all services performed by such * * * register of deeds * * **” (Emphasis supplied)

The Attorney General has ruled (O.A.G. 1937-38 p. 203) that a register of deeds who has been awarded a salary by the board of supervisors is not entitled to retain fees collected by him in the exercise of his duties. Such rule is equally applicable to other county officers who have been voted a salary.³ Thus, where a county clerk was paid a salary, he was not entitled to retain fees received by him for executing applications for passports in the discharge of a duty imposed upon him by a state officer in accordance with statutory authority.⁴

It must be concluded therefore that a register of deeds who is paid a salary pursuant to authorization of the county board of supervisors is not entitled to retain the fees collected by him in the discharge of duties imposed by law.

¹ The Uniform Commercial Code is currently published in pamphlet form as M.S.A. § 19.1101 et seq.

² C.L. 1948 § 45.401, M.S.A. 1961 Rev. Vol. § 5.911.

³ O.A.G. No. 10719, May 18, 1939; O.A.G. 1941-42, p. 453; O.A.G. No. 2191, July 12, 1955, p. 362.

⁴ O.A.G. No. 4115, Dec. 11, 1962, p. 618.

Part 4 of Article 9 of the Uniform Commercial Code, *Supra*, relates to filing. It specifies the fees to be paid for the filing and indexing of documents and for the furnishing of certificates. These functions when performed by a register of deeds are a part of the customary work of his office. This being so, the register of deeds, if on a salary basis, is not entitled to retain the fees referred to as additional compensation.⁵

FRANK J. KELLEY,
Attorney General.

640303.1

**CREDIT UNIONS: Perfected security interests.
UNIFORM COMMERCIAL CODE:**

The board of directors of a credit union is without authority to establish a reserve by resolution under the provisions of the Credit Union Act. While the Uniform Commercial Code does not make it mandatory that a lien be perfected by filing, the board of directors of the credit union in the discharge of the responsibility for funds of the members entrusted to its care should perfect liens by filing.

No. 4260

March 3, 1964.

Mr. Charles D. Slay
Commissioner, State Banking Department
Lansing, Michigan

You ask my opinion on the following questions:

"1. May the Board of Directors of a credit union, in lieu of actual filing of the chattel lien, establish a reserve for unrecorded chattel mortgages by crediting to this reserve the sum of one dollar for each chattel lien taken, which fund will then be utilized to absorb any loss which may result from not having filed this lien on the public records?

"2. Is the foregoing procedure in violation or contravention of the State Insurance Code?

"3. Does the Commercial Code, which becomes effective on January 1, 1964 make it mandatory that the financing statement, required under Article 9 of said Code, be filed with the appropriate filing officers specified therein?"

In opinion No. 1790 dated August 2, 1954 (O.A.G. 1952-54, page 376), it was concluded that the reserve fund provided in the act (Act 285, P.A. 1925, as amended; C.L.S. § 490.1, et seq.; M.S.A. 1957 Rev. Vol. and Curr. Mat. § 23.481 et seq.) could be used to pay premiums for credit insurance because it "was obviously the intention of the legislature to provide for this reserve fund to be used as a reserve fund for bad loans, and paying premiums for credit life or accident insurance from the said reserve fund would not seem to be a diversion of the fund for a purpose other than contemplated."

⁵ *Board of Supervisors of Jackson County v. Dicker*, 260 Mich. 78; *Isaman v. Antrim County Supervisors*, 348 Mich. 84.