

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.

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**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.

Your question contemplates the creation of a reserve fund by action of the Board of Directors of the credit union. Section 17 of the act provides for a statutory reserve fund as follows:

"All entrance fees, fines (which may be provided by the bylaws for failure to make repayments on loans and payments on shares when due), and each year, before the declaration of a dividend, 20% of the net earnings shall be set aside as a reserve fund which shall be kept liquid and intact and not loaned out to members, and shall belong to the corporation to be used as a reserve against bad loans and not be distributed except in case of liquidation: Provided, however, That when the reserve fund so established shall equal 10% of the credit union's assets, no further transfer of net earnings to such reserve shall be required, except such amounts not in excess of 20% of the net earnings as may be needed to maintain this 10% ratio shall be transferred."

There is no provision in the Michigan Credit Union Act for any other reserve fund than the one provided for in section 17.

The board of directors of a credit union is without power to establish a reserve fund under the provisions of the Michigan Credit Union Act; therefore, the answer to your first question is "No."

Because the answer to your first question is "No," it is not necessary to answer your second question.

The Uniform Commercial Code (Act 174, P.A. 1962; M.S.A. § 19.1101 et seq.) provides for the perfecting of a secured interest as evidenced by the "security agreement" by filing either the security agreement itself or a "financing statement." The financing statement is nothing more than a notice to third parties that the secured party has a lien or contemplates having a lien on the debtor's listed collateral (M.S.A. § 19.9402). The Uniform Commercial Code, in section 9105(h) [M.S.A. § 19.9105(h)], defines "security agreement" as "an agreement which creates or provides for a security interest."

The failure of the credit union to file a financing statement or the security agreement in lieu thereof would, of course, subject it to the risk of subsequent liens attaching in priority to the property which is the subject of the credit union security agreement. The board of directors of the credit union has an obligation to safeguard its assets. *East Side Credit Union of New York v. Lieman, et al*, 221 N.Y.S. 1. While the Uniform Commercial Code (Act 174, P.A. 1962; M.S.A. § 19.1101 et seq.) does not make it mandatory for any secured party to perfect his lien, the board of directors of the credit union is charged with the responsibility of protecting the funds of the members entrusted to its care and should file the financing statement or the security agreement in lieu thereof to protect the lien.

FRANK J. KELLEY,
Attorney General.