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OFFICIAL OPINION 2020-9

Paul F. Lottes
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302 West Washington Street, Room E418
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Dear Mr. Lottes:

This letter responds to your request for an official opinion of the Attorney General regarding recorders' fees.

QUESTION PRESENTED

What is the amount of the fee that should be charged by a county recorder when the county recorder is presented with a UCC financing statement for filing at the recorder's office?

BRIEF ANSWER

When presented with a UCC financing statement for filing, a county recorder should charge the fees indicated in Indiana Code § 36-2-7-10(b), which generally addresses the fees county recorders may charge for filings. The statute contains an express statement from the Legislature that the fees are intended to supersede any other statutory provision governing filing fees for county recorders. Moreover, that statement antedates Indiana Code § 26-1-9.1-525, which otherwise provides the fee that a governmental entity charges for recording a UCC financing statement. Because a general rule of statutory construction is that we presume that the Legislature is aware of all other statutes in existence, and knew of the clause indicating the records statute existed, we should presume that the Legislature recognized that this exception existed, and intended that county recorders would continue to charge the fees indicated in Indiana Code § 36-2-7-10(b) no matter what other general filing fee provisions the Legislature enacted.

BACKGROUND

Indiana Code § 36-2-7-10(b) provides:

(b) The county recorder shall charge and collect the fees prescribed by this section for recording, filing, copying, and other services the recorder renders, and shall pay them into the county treasury at the end of each calendar month. The fees prescribed and collected under this section supersede all other recording fees required by law to be charged for services rendered by the county recorder.

This statute was added to the Indiana Code in 1980. It was amended numerous times, to update the fee amounts among other changes, most recently by Public Law 86-2018, section 337.

However, Indiana Code § 26-1-9.1-525 specifically addresses the fees for filing and indexing a record under Indiana Code § 26-1-9.1-501 through Indiana Code § 26-1-9.1-527:

(a) Beginning on October 1, 2019, and except as otherwise provided in subsection (e), the fee for filing and indexing a record under IC 26-1-9.1-501 through IC 26-1-9.1-527, other than an initial financing statement of the kind described in IC 26-1-9.1-502(c), is:

- (1) twelve dollars (\$12) if the record is communicated in writing; and
- (2) no statutory fee if the record is communicated by electronic filing.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in IC 26-1-9.1-502(c) is:

- (1) twelve dollars (\$12) if the financing statement indicates that it is filed in connection with a public-finance transaction; and
- (2) twelve dollars (\$12) if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) The number of names under which a record must be indexed does not affect the amount of a fee under subsection (a) or (b).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

- (1) five dollars (\$5) if the request is communicated in writing; and
- (2) no statutory fee if the request is communicated electronically.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under IC 26-1-9.1-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

This statute was added to the Indiana Code in 2000 by Public Law 57-2000, §45. It was amended by Public Law 277-2001, §26; by Public Law 165-2001, §16; and by Public Law 177-2019, §17.

The publisher, West, includes the following comment with Indiana Code § 26-1-9.1-525:

UNIFORM COMMERCIAL CODE COMMENT

1. **Source.** Various sections of former Part 4.
2. **Fees.** This section contains all fee requirements for filing, indexing, and responding to requests for information. Uniformity in the fee structure (but not necessarily in the amount of fees) makes this Article easier for secured parties to use and reduces the likelihood that a filed record will be rejected for failure to pay at least the correct amount of the fee. See Section 9-516(b)(2).

The costs of processing electronic records are less than those with respect to written records. Accordingly, this section mandates a lower fee as an incentive to file electronically and imposes the additional charge (if any) for multiple debtors only with respect to written records. When written records are used, this Article encourages the use of the uniform forms in Section 9-521. The fee for filing these forms should be no greater than the fee for other written records.

To make the relevant information included in a filed record more accessible once the record is found, this section mandates a higher fee for longer written records than for shorter ones. Finally, recognizing that financing statements naming more than one debtor are most often filed against a husband and wife, any additional charge for multiple debtors applies to records filed with respect to more than two debtors, rather than with respect to more than one.

Ind. Code § 26-1-9.1-525 (West).

The code section was added as part of the Revised Article 9 effort, which was a revision to the law governing secured transactions in Indiana and throughout the nation, and took effect on July 1, 2001.¹ The revisions to Article 9 dealt primarily with transactions in which personal property is used as security for a loan of extension of credit.² The statute seems to be a restatement of Indiana Code § 26-1-9-401, which was repealed by P.L.57-2000, SEC.48. That statute provided in pertinent part:

- (8) The fee for filing each of the following is four dollars (\$4):
 - (a) Financing statements, if filed with the secretary of state.
 - (b) Continuation statements.
 - (c) Separate statements of assignment.
 - (d) Separate amendments of any of the foregoing.
 - (e) Lists of creditors and schedules of property filed with the secretary of state for entry in the bulk sale file.
 - (f) Partial releases, if filed with the county recorder.
 - (g) Lis pendens and other filings under the Uniform Commercial Code filing systems.
- (9) If the document is:
 - (a) filed with the county recorder; and
 - (b) a financing statement;

¹ “Indiana Secretary of State Revised Article 9 Center,” <https://www.in.gov/sos/business/2445.htm> (last visited October 20, 2020).

² “FFIEC STATEMENT ON REVISED UCC ARTICLE 9 February 28, 2001,” https://www.ffiec.gov/pdf/pr022801_statement.pdf (last visited October 22, 2020).

the fee for filing the document is eight dollars (\$8), which includes a prepaid release fee of four dollars (\$4).

Ind. Code § 26-1-9-401 (1999).

ANALYSIS

The first step in any interpretation of a statute “is to determine whether the Legislature has spoken clearly and unambiguously on the point in question.” *City of N. Vernon v. Jennings Nw. Reg’l Utilities*, 829 N.E.2d 1, 4 (Ind. 2005). Here, the Legislature apparently spoke twice on the same matter, namely the amount a county recorder should charge for filing UCC financing statements. We presume that the Legislature is aware of existing statutes in the same area and must construe differing statutes together to produce a harmonious result. *Lake Cty. Bd. of Elections & Registration v. Millender*, 727 N.E.2d 483, 486 (Ind. Ct. App. 2000); *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind. Ct. App. 1995). “If the statutes cannot be harmonized or reconciled, then the more specific or detailed statute will prevail over the more general statute as to the subject it covers.” *Decatur Twp. of Marion Cty. v. Marion Cty. Home Bd.*, 578 N.E.2d 390, 393 (Ind. Ct. App. 1991). “General statutes do not overrule or supersede specific provisions in another statute unless there is clear legislative intent to do so.” *Id.*

Two statutes exist, one that covers the fees that county recorders may charge generally, Indiana Code § 36-2-7-10(b), and one that speaks specifically to the filing fees for UCC financing statements, Indiana Code § 26-1-9.1-525. To interpret Indiana Code § 26-1-9.1-525 as controlling on the recorder’s fees would be in accord with the rule of statutory construction that “when general and specific statutes conflict in their application to a particular subject matter, the specific statute will prevail over the general statute.” *Lake Cty. Bd. of Elections & Registration*, 727 N.E.2d at 486; *see also, Indiana Alcoholic Beverage Comm’n v. Osco Drug, Inc.*, 431 N.E.2d 823, 833–34 (Ind. Ct. App. 1982). However, the general statute applying to the fees county recorders may charge, Indiana Code § 36-2-7-10(b), clearly and specifically indicates the Legislature’s intent that it supersede all other statutes indicating what fees a governmental entity can charge to record a document. Moreover, Indiana Code § 36-2-7-10(b) was enacted with the language indicating it would supersede any other filing fee statute at the time the Legislature enacted Indiana Code § 26-1-9.1-525. That point is clear and unambiguous. *City of N. Vernon* at 4. As noted above, when interpreting two statutes, we presume that the Legislature is aware of existing statutes in the same area and must construe differing statutes together to produce a harmonious result. *Lake Cty. Bd. of Elections & Registration*, 727 N.E.2d at 486; *Town of Merrillville*, 649 N.E.2d at 649. In light of the specific and unambiguous statement in Indiana Code § 36-2-7-10(b) that indicates the Legislature’s intent that it supersede all other statutes indicating what fees a governmental entity can charge to record a document, it is clear that county recorders should be following Indiana Code § 36-2-7-10(b) when recording UCC financing statements.

CONCLUSION

County recorders should charge the fees indicated in Indiana Code § 36-2-7-10 for “recording, filing, copying, and other services the recorder renders,” as the Legislature clearly indicated that the fees prescribed and collected pursuant to that statute supersede all other recording fees required by law to be charged for services rendered by the county recorder.

Sincerely,

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