

44

2/27/69

First Supplement to Memorandum 69-45

Subject: Study 44 - Fictitious Business Name Statute

In connection with the tentative recommendation attached to Memorandum 69-45, you will want to consider the attached letter.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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LEGAL ADVERTISING**The
Los Angeles Daily Journal**ESTABLISHED 1888

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LOS ANGELES, CALIFORNIA 90012

February 4, 1969

California Law Revision Commission
c/o State Bar of California
1230 West Third Street
Los Angeles, California

Gentlemen:

Thank you for your communication of January 21, containing the latest version of proposed changes in the Fictitious Business Name Statute. My attendance Thursday through Saturday at the California Newspaper Publishers' Association convention in San Francisco precludes the presentation by me of these comments in person on behalf of the Los Angeles Daily Journal.

While it appears the most recent proposals contain some merit in the effort to modernize and update the statute, there are still serious questions in our opinion to be resolved before the matter properly can be submitted to the legislature for consideration.

Needless to say, the differences of opinion concerning the repeal of the abandonment publication and the number of insertions needed to give the public adequate notice is undoubtedly scheduled to be well covered in your discussions with the CNPA. Likewise, the assertion in your submitted material that most certificates in Los Angeles County are published by "legal newspapers" will undoubtedly be challenged by CNPA because in fact the majority of published certificates are printed in the community newspapers. In many areas of the state, the publications are wholly in the local newspapers.

What we would like particularly to protest at this time, however, are the four suggestions in the report relating to (1.) public access to the original certificates, (2.) sale and distribution by public agency of the filed information which is presently being distributed by private agencies, (3.) the lack of uniformity between what may be filed and what may be published, and (4.) the increased cost to \$10 of the fee for filing.

As we read the report, it is your proposal that listings of filings will be sold by county clerks to interested parties. We have had some experience with purchasing "processed" information from public agencies. It has been our observation that so far as the public is concerned such a "processing" in fact limits access to the information and unnecessarily consumes energies of public employees better kept busy in other activities.

If you are to put county clerks into the business of selling public records to the public then should you not by statute guarantee the public, including newspapers and credit searching and reporting agencies, equal access to the material so that private enterprise can

at least compete with government on something of an equal basis? Those who recommend that the county clerks be placed by law into competition with private enterprise should be reminded that such certificate listings as are being proposed are now available through private channels, including not only many of the county seat legal papers of the state but also such firms as Dunn and Bradstreet, McGraw-Hill Co., Southern California Credit Managers' Association, Building Trades Association, Dodge Reports, and several others. The McCord Notification Sheet publishes such lists of certificate filings daily in both its Los Angeles and its San Francisco editions. Here at the Los Angeles Daily Journal, we maintain a reporting service on all filings and recordings made in all the Southern California counties and now a growing number of Central and Northern California counties. These reports go out on 3 X 5 cards to all the major credit reporting agencies, about 3,000 slips each day and including all the Fictitious Firm Name filings and all the abandonments of such. All these at a general price of three cents each, much less, the commission must agree, than such records can be sold by the county clerks of the state. There has been little demand for such lists of filings by categories aside from geographic areas, but when there is, we or other private agencies in this highly competitive field of reporting can provide it.

You also have indicated in the recommendation for the Law Revision Commission that the certificate to be published may differ from the one to be filed. We point out that if the notarial acknowledgement is required on the filed certificate to guarantee the identity of the person or persons making the sworn declaration, it should be on the copy provided to the public through publication.

Likewise, if the addresses of the declarant firm members are to be included on the filing, the public is also entitled to this information.

Should the Commission succeed as recommended in enacting provisions setting up two documents prepared separately, it will inevitably cause variances in the certificate information. Your staff indicates these recommendations are proposed to make savings in cost of publication which in any case are actually negligible. The small amount of space to be saved by such a device of shrinking the certificate will simply be adding the term "negligibility" to that of "negligible." Furthermore, in the cases where the newspaper charge for the publication is on a "flat rate" basis which is now the prevailing practice among newspapers for such notices as trade name certificates, there can be no saving whatsoever.

It should be emphasized again that as with publications required under the Uniform Commercial Code, the published Fictitious Firm Name certificate should conform precisely to the copy in the County Clerk's file.

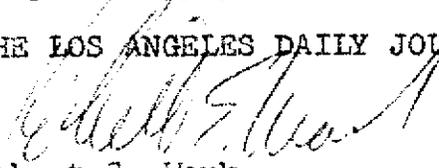
The filing fee to be collected by the county clerk may not be the direct concern of the newspaper, although the filing fee is advanced for attorneys by the publishing newspapers, and a \$10 filing fee might make it necessary to review this practice.

February 4, 1969

Admitting that the present \$2 filing fee does not cover the costs of the county clerk in the processing of fictitious name certificates and that a higher fee is warranted, we cannot quite reconcile the recommendation for a 500 percent increase in the filing fee with the professed fight for economy in this particular category of public notice. We respectfully suggest that perhaps the proper level of the filing fee should be based on cost studies carried out by the County Clerks' Association rather than based on a cost formula which at one time was designed to finance the storing of these filings in the recommended costly new computer of the Secretary of State at Sacramento.

Respectfully yours,

THE LOS ANGELES DAILY JOURNAL



Robert E. Work
Co-Publisher

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