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FILE NO. S-965

**ASSUMED NAME:  
Registration of  
Identical Names**

Honorable William J. Cowlin  
State's Attorney of McHenry County  
2200 North Seminary Avenue  
Woodstock, Illinois 60098

Dear Mr. Cowlin:

This responds to your request as to whether more than one business may be registered with the same assumed name under "AN ACT in relation to the use of an assumed name in the conduct of transaction of business in this State" (Ill. Rev. Stat. 1973, ch. 96, pars. 4 et seq.), hereinafter referred to as the Business Registration Act of 1941, and if not, whether the county clerk is authorized to refuse registration to the second applicant for the same assumed name.

Section 1 of the Act in question (Ill. Rev. Stat. 1973, ch. 96, par. 4) provides in part as follows:

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"§ 1. No person or persons shall conduct or transact business in this State under an assumed name, or under any designation, name or style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business, unless such person or persons shall file in the office of the County Clerk of the County in which such person or persons conduct or transact or intend to conduct or transact such business, a certificate setting forth the name under which the business is, or is to be, conducted or transacted, and the true or real full name or names of the person or persons owning, conducting or transacting the same, with the post office address or addresses of such person or persons and every address where such business is, or is to be, conducted or transacted in the county. The certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct the business.

\* \* \*

For the reasons to be discussed, I am of the opinion that the Business Registration Act of 1941 does not prohibit the registration of the same assumed name by more than one business. Therefore, I need not discuss your second question.

Under the common law a person could transact business using an assumed name. (Beilin v. Krenn & Dato, 350 Ill. 284; 57 Am. Jur. 2d Names, sec. 26.) In Platt v. Locke, 358 P. 2d 95, 98 (Utah 1961) the Supreme Court of Utah stated that "the law generally recognizes that persons may transact business under an assumed name or fictitious name as long as fraud, infringement of trademark or unfair competition are not involved".

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The Business Registration Act of 1941 is in derogation of the common law and has been strictly construed. The Act has been limited in its effect to requiring a filing notifying the public of the actual name of the person conducting the business. In People v. Arnold, 3 Ill. App. 3d 678, the Appellate Court stated the purpose of the Act but also showed its limitations. It stated at page 681 as follows:

"\* \* \* The Business Registration Act of 1941 (ch. 96, pars. 4 to 8a, incl.) provides the public with access to information concerning the identity of those conducting businesses under names other than their own, and protects individuals who might deal with or give credit to a fictitious entity. (Grody v. Scalone (1951), 408 Ill. 61, 96 N.E. 2d 97.) \* \* \* A party who operates under an assumed name and who has not registered this name may sue and be sued; he may receive and hold licenses pertinent to the operation of his business and he may enforce contracts and collect debts owed to him. [citations omitted.] Thus, the legislature and courts have acted to protect the interests both of the public and of the individual who may not be complying with the statutory requirements. \* \* \* "

Registration of an assumed name does not create a right to that name and the right to use a particular assumed name is subject to the prior trade name and trademark rights. (Nielsen v. American Oil Company, 203 F. Supp. 473; Shrout v. Tines, 260 S.W. 2d 782; (St. Louis Ct. of Appeals 1953).) If a county clerk could refuse registration to the second business,

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he may be denying the registration to the person legally entitled to the assumed name.

Furthermore, the Act does not specifically prohibit the registration of identical assumed names as does the Business Corporation Act. Ill. Rev. Stat. 1973, ch. 32, par. 157.9.

Therefore, because the registration of an identical assumed name has not been specifically prohibited, because registration does not create a right to the name and because the Business Registration Act of 1941 has been strictly construed, the registration of an identical name is not prohibited by the Act.

This opinion neither advises on the validity of the use of the same assumed names by different individuals nor interprets the Uniform Deceptive Trade Practices Act (Ill. Rev. Stat. 1973, ch. 121 1/2, pars. 311 et seq.) or AN ACT to prohibit the counterfeiting and imitation of trademarks and the unauthorized use of trade-marks and trade names". Ill. Rev. Stat. 1973, ch. 140, pars. 23 et seq.

Very truly yours,

A T T O R N E Y   G E N E R A L