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Opinion No. 86-070

August 27, 1987

Honorable W. J. "Bill" McCuen
Secretary of State
State Capitol
Little Rock, Arkansas 72201-1094

Dear Mr. McCuen:

This is in response to your request for an opinion concerning the registration of trade names by individuals in Arkansas. More specifically you ask whether or not a procedure for the registration of such trade names by your office would be compatible with your implied duties concerning trade marks and service marks and whether establishing a registration procedure falls within the discretionary jurisdiction of your office.

As you well know Ark. Stat. Ann. §§70-539 et seq. prescribes the registration of trade and service marks with your office, but is silent regarding the registration of trade names.

In determining whether authority lies with the Secretary of State to establish a registration procedure of trade names a review of the duties of the Secretary of State indicates that there is no such authority. Article 6, §§21 and 22 of the Arkansas Constitution prescribe the duties of the Secretary of State as follows:

§21. Duties of secretary of state. -- The Secretary of State shall keep a full and accurate record of all the official acts and proceedings of the Governor, and, when required, lay the same, with all papers, minutes and vouchers relating thereto, before either branch of the General Assembly. He shall also discharge the duties of Superintendent of Public Instruction until otherwise provided by law.

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§22. Duties of executive officers in general -- Dual office holding prohibited -- Vacancies -- Filing. -- The Treasurer of State, Secretary of State, Auditor of State and Attorney General shall perform such duties as may be prescribed by law. . . .

At the present time there exists no law which prescribes the Secretary of State to register trade names of individuals.

The only protection of an unincorporated individual's trade name from conflict with a competing business interest would be to incorporate using that particular trade name or to comply with Ark. Stat. Ann. §§70-401 et seq. which requires all persons conducting or transacting business in this State under an assumed name other than the real name of the individual conducting or transacting such business to file such name with the office of the County Clerk of the counties in which such person conducts or transacts such business. Domestic and foreign corporations lawfully doing business in this State and limited partnerships which have filed their certificate of limited partnership with the Secretary of State are exempt from this requirement.

Protection is provided to persons wishing to incorporate pursuant to the recently enacted Arkansas Business Corporaiton Act. Ark. Stat. Ann. §64-401(B) provides that corporate names must be distinguishable upon the records of the Secretary of State from other corporations authorized to transact business in the State or from those names reserved or registered through your office.

Enclosed for your information are copies of Ark. Stat. Ann. §§70-401 et seq. and 64-401.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General C. Kent Jolliff.

Sincerely,


STEVE CLARK
Attorney General

SC:CKJ:dd

Enclosure