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1. MORTGAGE—PUBLIC UTILITY COMPANY—COVERING REAL ESTATE AND CHATTELS, MOTOR VEHICLES—FILED FOR RECORD—CERTIFICATES OF TITLE—TO PERFECT LIEN, INSTRUMENTS MUST BE PRESENTED TO CLERK, COURT OF COMMON PLEAS—DUTY OF CLERK TO MAKE NOTATIONS, SECTION 4505.13 RC—CLERK MAY NOT REFUSE BECAUSE MORTGAGE COVERS BOTH REAL AND CHATTEL PROPERTY OR BECAUSE NO DESCRIPTION OF SEVERAL VEHICLES COVERED BY MORTGAGE OR BECAUSE IT COVERS AFTER ACQUIRED PROPERTY—SECTION 1701.66 RC.
2. NO AUTHORITY IN SECTION 4505.13 RC FOR FILING WITH CLERK OF COURT, COPY OF MORTGAGE OF PUBLIC UTILITY COMPANY OR NOTATION THEREON OF LIEN ON MOTOR VEHICLE OWNED BY COMPANY AND COVERED BY MORTGAGE.

SYLLABUS:

1. Where a mortgage executed by a public utility company, covering real estate and chattels, and including all motor vehicles presently owned or thereafter to be acquired, has been filed for record as prescribed in Section 1701.66, of the Revised Code, said mortgage, together with certificates of title of such motor vehicles must, in order to perfect the lien of such mortgage thereon, be presented to the clerk of the court of common pleas as required by Section 4505.13, of the Revised Code. Upon such presentation, it is the duty of the clerk to make such notations as are required by said Section 4505.13, and he is not justified in refusing to do so because the mortgage covers both real and chattel property, or because the mortgage does not contain a description of the several vehicles covered by the mortgage, or because it covers after acquired property.

2. There is no authority in Section 4505.13, of the Revised Code, for the filing with the clerk of court of a copy of a mortgage of a public utility company, or the notation thereon of a lien on a motor vehicle owned by such company and covered by such mortgage.

Columbus, Ohio, January 6, 1956

Hon. Alva J. Russell, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“‘X’ Company is a Public Utility Company, subject to the jurisdiction of the Public Utilities Commission of Ohio. Its capitalization includes various issues of first mortgage bonds secured by an indenture, which included all real and personal property, including motor vehicles owned by the company at the time said mortgage was executed, and included all after-acquired property as being subject to the lien of the mortgage.

“Said mortgage has been filed with the County Recorder pursuant to Section 1701.82 R.C., and until the revision of said Section as Section 1701.66 R.C., the Public Utility has considered it unnecessary to the effectiveness of the lien to secure a notation of the lien on certificates of title to motor vehicles, despite the previously enacted provisions of Section 4505.04 R.C.

“Said Public Utility has purchased several motor vehicles, and has applied to the Clerk of Courts for certificates of title, and in an attempt to comply with the revised Section 1701.66 R.C., subsection F, has noted the lien of the mortgage thereon. The Clerk of Courts has objected to noting this lien on the certificates so applied for, based on a lack of authorization:

1. To note a lien in the absence of specific description or reference to the vehicle, and
2. That he is not authorized to accept, for filing, a combination mortgage, applying to both real and personal property, or to chattels.

“Said Clerk of Courts is withholding issuance of certificates of title pending your answers to the following questions:

1. May the Clerk of Courts note a lien on a certificate of title to a motor vehicle owned by a Public Utility when the said motor vehicle constitutes after-acquired property, and the instrument creating such lien contains no specific description or reference to any particular motor vehicle, and which mortgage, in addition, covers other personal as well as real property?
2. If your answer to question 1 is yes, may the Clerk of Courts accept from a Public Utility Company for filing, a single copy of its mortgage, and indicate by appropriate notation thereon, the fact of his having noted the lien of such instrument on the several certificates of title which he may thereafter issue from time to time?
3. If your answer to question 1 is no, has the trustee or mortgagee under the mortgage of a Public Utility Company a valid lien, and one good as against purchasers without notice on motor vehicles owned by such company, and on motor vehicles after acquired by such company, without notation on the certificate of title, when such

mortgage filed and recorded as provided by Section 1701.66 R.C. purports to subject to its lien of real and personal property, including motor vehicles, which are after-acquired property.

Most of the substance of the present provisions of Section 1701.66, Revised Code, was, prior to its recent amendment by the 101st. General Assembly, contained in Section 1701.82, of the Revised Code. Section 1701.66, which became effective October 11, 1955, reads as follows:

(A) A mortgage of property of any description, or any interest therein, made (1) by a corporation which is a railroad or a public utility as defined by sections 4907.02, 4905.02, and 4905.03 of the Revised Code; or (2) by a corporation, domestic or foreign, organized for the purpose of constructing, acquiring, owning, or operating a railroad or public utility, as so defined, or any part thereof, or, as a common carrier, a trolley bus system, in whole or in part in this state; or (3) by a municipal corporation pursuant to section 12 of Article XVIII, Ohio Constitution; shall be recorded in the office of the county recorder of each county in this state in which any of said property is situated or employed; *but a mortgage by such mortgagor which includes rolling stock or movable equipment such as cars, locomotives, or trolley buses, motor buses, or other vehicles, or machines for aerial transportation, may be filed in the office of the secretary of state, and when so filed shall have the same effect, as to the lien created thereby on such rolling stock, movable equipment, or machines, as though filed in the office of the recorder of each such county in which such rolling stock, movable equipment, or machines are situated or employed. In lieu of filing an original of said mortgage, a true copy thereof, with an affidavit by the mortgagor, the mortgagee, or an agent of either that it is a true copy, may be filed.*

(B) Any such mortgage shall be a lien on the property therein described from the respective times of the filing of such mortgage for record with the recorders of said counties; but any such mortgage covering such rolling stock, movable equipment, or machines shall be a lien thereon from the time of the filing of such mortgage, or a true copy thereof, with the secretary of state.

(C) If any mortgage by its terms creates a lien upon any property, which may thereafter be acquired by the mortgagor, it shall be a lien upon all the interest of the mortgagor in such after-acquired property from the date of its acquisition thereof, if such mortgage was or is recorded or filed as provided in this section.

(D) The secretary of state shall charge and collect, for every such mortgage or true copy thereof filed in his office, a fee of one dollar. He shall indorse on the mortgage or true copy the time of its filing and shall keep a record of the filing in a book to be kept for said purpose, giving the names of all parties to the mortgage, alphabetically arranged, the date of the mortgage, and the time of its filing. The mortgage or true copy and the record of its filing shall be open to public inspection. When the mortgage is canceled, the date of cancellation shall be entered on the margin of the record thereof.

(E) Mortgages of the character described in this section need not be otherwise filed or refiled as chattel mortgages, nor need there be any affidavits thereon as required by section 1319.04 of the Revised Code.

(F) *Nothing contained in this section shall make inapplicable the provisions of sections (chapters) 4505 to 4519, inclusive, of the Revised Code, relating to motor vehicles. (Emphasis added.)*

Section 4505.04, of the Revised Code, being a part of the motor vehicle law, requires "every person acquiring a motor vehicle" to have a certificate of title, and Section 4505.07 prescribes the form of such certificate, and requires the name and address of the owner, and the description of the motor vehicle as to its make, body type, model, manufacturer's serial number, motor number and horse power.

Applying the rule laid down in Section 1.02, of the Revised Code, that "unless the context otherwise requires, *** person includes a private corporation", it is certain that the provisions of the section above quoted requiring every person, upon acquiring a motor vehicle, to have his title evidenced by a certificate of title, apply to the corporations referred to in Section 1701.66 supra.

The manifest purpose of the legislature in adding paragraph (F) to Section 1701.66 was to make it clear that public utility corporations, like other owners of motor vehicles, must comply with the provisions of the laws relating to motor vehicles in regard to the issuance and transfer of certificates of title to all motor vehicles acquired by them, and to the perfecting and cancellation of liens thereon. And saying that "nothing contained herein shall make inapplicable the provisions *** relating to motor vehicles" was equivalent to a declaration that a public utility company mortgaging a motor vehicle, or one who undertakes to secure a lien

on the same, must not only file the mortgage as directed but must also take the steps set forth in the motor vehicle statutes.

This brings us to the provisions of Section 4505.13, of the Revised Code, 6290-9 G. C., relative to a lien on a motor vehicle. That section begins by eliminating the procedure as to such lien contemplated by Sections 1319.01 to 1319.16, 8560 to 8572 G. C., inclusive, which relate to the deposit, filing or other record of chattel mortgages generally, and substituting a different procedure as to motor vehicles. This section provides in part as follows:

“* * * Any mortgage, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or other similar instrument covering a motor vehicle, if such instrument is accompanied by delivery of a manufacturer’s or importer’s certificate and followed by actual and continued possession of such certificate by the holder of said instrument, or, in the case of a certificate of title, if a notation of such instrument has been made by the clerk of the court of common pleas on the face of such certificate, shall be valid as against the creditors of the mortgagor, whether armed with process or not, and against subsequent purchasers, mortgagees, and other lienholders or claimants. All liens, mortgages, and encumbrances noted upon a certificate of title shall take priority according to the order of time in which the same are noted thereon by the clerk.” * * *

“The holder of a chattel mortgage, trust receipt, conditional sales contract, or similar instrument, upon presentation of said instrument to the clerk of the county in which the certificate of title was issued, together with such certificate of title and the fee prescribed by section 4505.09 of the Revised Code, may have a notation of such lien made on the face of such certificate of title. The clerk shall enter said notation and the date thereof over his signature and seal of office, and he shall also note such lien and the date thereof on the duplicate of same in his files and on that day shall notify the registrar of motor vehicles, who shall do likewise. The clerk shall also indicate by appropriate notation on such instrument itself the fact that such lien has been noted on the certificate of title.

“When such lien is discharged, *the holder thereof* shall note a discharge of same on the face of the certificate of title over his signature. Prior to delivering such certificate to the owner, *the holder* shall either present it to the clerk for the purpose of having the clerk note the cancellation of said lien on the face of said certificate of title and upon the records of the clerk, or shall, within ten days of the discharge of such lien, deliver to the clerk of the county in which such lien is recorded a separate written notice

of discharge for each lien, for the cancellation of each such lien in the records of the clerk, containing the name of the certificate of title holder, the name of the lienholder, the date of the notation of the lien, the amount of the lien, and the date of the discharge of the lien all over the signature of such certificate holder. The clerk, if such cancellation appears to be genuine, shall note such cancellation on the certificate of title, and he shall also note said cancellation on his records and notify the registrar, who shall note such cancellation. * * * (Emphasis added.)

The clerk, in the performance of his function relative to the notation of a lien on a motor vehicle is entitled to have presented to him the certificate of ownership which must comply with the provisions of Section 4505.07, above referred to.

There is nothing in the statute which requires the *filing* with the clerk of courts of *the instrument*, such as a mortgage, which undertakes to create a lien on a motor vehicle. The statute does contemplate that the instrument is to be "presented" to him and that a notation of the lien created by such instrument shall be made by him on the face of the certificate of title. It will be observed that the statute further provides that "the clerk shall also indicate by appropriate notation on such instrument itself, the fact that such lien has been noted on the certificate of title."

There is nothing in the statute which requires a specific description of the motor vehicle shall be contained in the mortgage, and the clerk would not be justified in refusing to make the required notations of the lien on that ground. In my opinion the law is satisfied by the presentation to the clerk of the proper certificate of ownership containing the required description of each motor vehicle, together with the mortgage instrument clearly showing the intention of the company to place a mortgage lien *upon all of its motor vehicles*. When the certificate and mortgage are presented to the clerk by the mortgagee, the clerk should have no hesitancy in making the notations specified in the law and, in my opinion, it is his duty so to do.

As to motor vehicles that may be acquired after the execution of the mortgage and which are covered thereby, the clerk could not of course make the notation of lien unless and until the certificate for such after acquired vehicle is presented to him and unless the mortgage itself is presented for his notation thereon as required by law.

In opinion No. 802, Opinions of the Attorney General for 1939, page 1025, Section 6290-9 of the General Code, now Section 4505.13, of the Revised Code, was under consideration and it was held:

“Sections 6290-9 and 8561, General Code, which provide respectively for the filing of encumbrances on automobiles with the clerk of courts and the filing of chattel mortgages with the county recorder, make no provision for the filing of a combination chattel mortgage covering both automobiles and other personal property and the clerk of courts and the county recorder are, therefore, without authority to accept such mortgage for filing.”

There is nothing in that opinion that has any reference to a mortgage by a public utility company. The matter with which we are concerned deals solely with such a mortgage. The opinion referred to may be assumed to be a correct expression of the law as to chattel mortgages generally. But the legislature has seen fit to make special provision in Section 1701.66, *supra*, for a mortgage by a public utility covering both realty and personal property including motor vehicles and covering after acquired property as well as that presently owned.

Accordingly I do not consider that opinion or the authorities therein referred to as having any bearing on the problem here under consideration. The mortgage described in your letter is entitled to record as provided in said Section 1701.66, of the Revised Code, but is subject also to the provisions of Section 4505.13, of the Revised Code, as to presentation to the clerk of court, and the mortgage, on compliance with the law as to presentation to the clerk, is entitled to the action of the clerk as therein provided.

Your second question suggests that there might be filed with the clerk a copy of the mortgage on which he would note the lien on motor vehicles owned or afterward acquired by the utility company. As already stated, there is no provision in the law for *filing* a mortgage or other instrument of lien. Furthermore the statute, Section 4505.13, *supra*, distinctly specifies that the notation is to be made “on such instrument itself,” which language certainly excludes a copy. Accordingly I must hold that the filing of a copy and making notations thereon would not satisfy the law.

In the light of my answer to your first question, it does not appear that your third question requires discussion.

It is, therefore, my opinion and you are advised :

1. Where a mortgage executed by a public utility company, covering real estate and chattels, and including all motor vehicles presently owned

or thereafter to be acquired, has been filed for record as prescribed in Section 1701.66, of the Revised Code, said mortgage, together with certificates of title of such motor vehicles must, in order to perfect the lien of such mortgage thereon, be presented to the clerk of the court of common pleas as required by Section 4505.13, of the Revised Code. Upon such presentation, it is the duty of the clerk to make such notations as are required by said Section 4505.13, and he is not justified in refusing to do so because the mortgage covers both real and chattel property, or because the mortgage does not contain a description of the several vehicles covered by the mortgage, or because it covers after acquired property

2. There is no authority in Section 4505.13, of the Revised Code, for the filing with the clerk of court of a copy of a mortgage of a public utility company, or the notation thereon of a lien on a motor vehicle owned by such company and covered by such mortgage.

Respectfully,
C. WILLIAM O'NEILL
Attorney General