

**MORTGAGES: RELEASING OF
MORTGAGES SECURED BY SERIES,
NOTES OR BONDS:**

Mortgages or deeds of trust providing for issue of series of notes or bonds aggregating \$100,000.00 or more and given by public utility not under jurisdiction of Public Service Commission, may be released in accordance with the provisions of Section 3083, Laws of Mo. 1933.

September 6, 1939

Mr. John T. Barlow
Recorder of Deeds
Newton County
Neosho, Missouri



Dear Sir:

We have received a request for an opinion written by Honorable Leo H. Johnson, Attorney at Law, which request appears to be in your behalf since it is on the question of the manner of releasing a certain mortgage. This request is as follows:

"Our Recorder of Deeds and mutual friend, John T. Barlow of Neosho, is presented with a question of entering a release of record as offered by the Cities Service Gas Company of Bartlesville, Oklahoma, a Delaware Corporation. This release purports to cover some thirty million dollars worth of bonds.

"The release contains these two clauses: Whereas -- (said bonds) 'were uncanceled and outstanding immediately preceding the execution and delivery of this indenture of release; and

"Whereas all the debts, claims, and interest arising by virtue of said mortgage and indenture of trust and indenture supplemental thereto have been fully paid and satisfied by Cities Service Gas Company, etc.'

"Thus the release contains two contrary statements as to the satisfaction of this mortgage indebtedness in two paragraphs, one following the other. This is one matter we have been unable to reconcile.

"The next question is whether or not the release of such a deed of trust should be in accordance with Section 3080 Laws of 1933, Page 194, or Section 3083 on said page.

"In the letter of Mr. Julien, attorney for said company, dated at Bartlesville August 21, he states: 'Cities Service Gas Company is not, of course, a public utility and therefore Section 3080 does not apply'.

"To secure a release the Cities Service Gas Company by the trustee named, or its successor, has executed a release of indenture in due form as of date of December 29, 1938 with the exception of the contradictory statement hereinabove quoted. This was submitted for recording January 9, 1939 and under date of June 21, 1939 submitted the enclosed instrument referred to by Mr. Julien as a Certificate in compliance with and under Section 3083. This certificate is short and I thought you might be willing to look it over and return at your earliest convenience.

"If the Cities Service Gas Company of Bartlesville, Oklahoma is a public utility, then certainly Section 3080 controls. And if such latter section controls, then affidavits are required from the president or vice president of the utility and by the president and vice president of the trustee or trustees to the effect that all of

such bonds have been paid or sufficient funds deposited for that express purpose with the Banker Trust Company to retire the bonds, etc. outstanding and unpaid."

I.

The first part of your request deals with the question of whether or not there are two contradictory statements in a form of release which is submitted by the company. These statements are as follows:

"Where - - (said bonds) 'were uncancelled and outstanding immediately preceding the execution and delivery of this indenture of release; and

"Whereas all the debts, claims, and interest arising by virtue of said mortgage and indenture of trust and indenture supplemental thereto have been fully paid and satisfied by Cities Service Gas Company, etc.'"

While these statements might sound somewhat inconsistent, we do not think they are contradictory. By the first statement that the bonds were uncancelled immediately preceding the execution of the released deed, we think that the writer of that statement meant that these obligations were uncancelled and outstanding in so far as the records in the office of recorder of deeds reveal. Then the statement following that they have been paid by the company is for the purpose of showing that it is authorized to make the release as is provided by law. Therefore, we think the recorder should not refuse to make this release and enter it of record on account of the foregoing clauses.

II.

The next question submitted is under which section of the statutes should this release be made.

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You state that the mortgage which is sought to be released was executed by the Cities Service Gas Company. It purports to cover thirty million dollars worth of bonds.

I note from Mr. Johnson's letter that the attorney for the company stated that the Cities Service Gas Company is not a public utility. In my inquiry at the Public Service Commission for this state I find that that Commission is exercising no jurisdiction over this company.

In your inquiry you ask whether or not Section 3080, Laws of Missouri, 1933, at page 194, applies, or whether Section 3083 of the same laws and page applies. Section 3080 is as follows:

"The trustee, or trustees, in any mortgage or deed of trust given or which may hereafter be given by a railroad company or other public utility company which is subject to the regulation of the Public Service Commission, or successors, upon its property or any part thereof, may enter satisfaction of said mortgage or deed of trust upon the records where the same has been recorded without producing the bonds, notes or coupons secured by said mortgage or deed of trust; Provided, however, that said mortgage or deed of trust shall not be entered as satisfied until the trustee, or if said trustee is a corporation, its president and vice-president, and the president or vice-president of the railroad company or other public utility company, or of its successors or assigns, shall make and file with the recorder affidavits stating that all of the bonds, notes or coupons secured by said mortgage or deed of trust have been paid or that sufficient funds have been

deposited with a bank or trust company to pay all the bonds, notes or coupons still outstanding and unpaid; and that said money is deposited for the express purpose of paying said bonds, notes or coupons when the same shall be presented at said bank or trust company for payment."

It appears from the request that you are under the impression that Section 3080 applies for the purpose of making this release.

If the Cities Service Gas Company is not one of the companies described in said Section 3080, then the release comes within the class described in Section 3083 of said laws. This section provides in part as follows:

"Whenever any mortgage or deed of trust heretofore or hereafter executed, providing for the issue of a series of notes or bonds aggregating one hundred thousand dollars or more not including interest or interest notes or coupons secured in whole or in part by property located in this state, by its terms confers authority upon the trustee or trustees therein named, or either of them, to release the property or any part thereof encumbered by any such mortgage or deed of trust from the lien thereof, such release may be so made and it shall be the duty of the recorder of deeds of the county in which the property is released from such mortgage or deed of trust shall be situated to accept and record in the proper records any deed of release executed and duly acknowledged by such trustee, pursuant to the authority conferred by such mortgage or deed of trust, releasing the whole or any part of such mortgaged property, without the notes or bonds or coupons secured by such mortgage or deed of trust being

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produced: Provided, however, that no such release shall be made unless such mortgage or deed of trust shall contain a provision requiring that the amount due under the mortgage or deed of trust or the amount of money or other consideration received from the sale of the property described in such release or such portion thereof as may be stipulated in such mortgage or deed of trust shall be deposited with some banking firm or banking corporation or trust company named in such mortgage or deed of trust for the benefit of the holders of such notes or bonds, or a provision requiring that there shall have been reinvested in property subject to the lien of such mortgage or deed of trust and amount of money equal to the value of the property so released: * * * * "

The copy of the certificate for release, which was enclosed with the request and which was submitted to you with the release, has been noted. This certificate was made by one of the trustees under the mortgage and shows that the mortgage was for more than one hundred thousand dollars, and that the mortgage provided for the issuance of a series of notes or bonds.

Since you have requested that this copy be returned to you, we are copying the same here:

"CENTRAL HANOVER BANK AND TRUST COMPANY (formerly Central Union Trust Company of New York), one of the Trustees under a Mortgage and Indenture of Trust dated as of May 1, 1927, between Cities Service Gas Company, a Delaware corporation, and Central Union Trust Company of New York (Now Central Hanover Bank and Trust Company) and Commerce Trust Company (Kansas City, Missouri), Trustees, hereby certifies that First Mortgage Pipeline $5\frac{1}{8}\%$ Gold Bonds, Series of 1927, due May 1, 1942, in

the principal amount of \$16,277,800, and First Mortgage Pipeline 5½% Gold Bonds, Series of 1928, due May 1, 1942, in the principal amount of \$14,352,000, were outstanding under said Indenture at the close of business on December 28th, 1938; that Cities Service Gas Company has this day surrendered for cancellation \$1,211,600 principal amount of said bonds, Series of 1927, together with all unmatured coupons appertaining thereto, and \$14,352,000 principal amount of said Bonds, Series of 1928, together with all unmatured coupons appertaining thereto, and has irrevocably deposited in trust with the undersigned the sum of \$15,486,245.66 which will be sufficient to redeem on February 28, 1939, at the redemption price of 101% of the principal amount thereof plus accrued interest to the redemption date, all remaining Bonds outstanding under said Indenture, and has irrevocably authorized the undersigned to apply said sum to the redemption of all said outstanding bonds in accordance with the provisions of said Indenture; that Cities Service Gas Company has also irrevocably deposited with the undersigned in trust the sum of \$38,618.25, which sum will be sufficient to pay all installments of interest maturing prior to February 28, 1939 in respect of Bonds outstanding under said Indenture, other than interest on fully registered Bonds as to which the undersigned has received satisfactory evidence of the payment thereof by or on behalf of the Company and other than interest represented by coupons which have been surrendered to the undersigned and cancelled, and has irrevocably authorized the undersigned to apply said sum to the payment of all such unpaid interest.

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"Said Central Hanover Bank and Trust Company further certifies that it has received irrevocable authority from Cities Service Gas Company to publish and mail notice of redemption of all said outstanding Bonds in the manner provided in said Indenture.

"Dated; New York, N. Y., December 29, 1938.

"CENTRAL HANOVER BANK AND TRUST COMPANY

By F. Wolfe
Vice-President

"(SEAL)

"Attest: J. T. Harrigan
Assistant Secretary"

Apparently when this certificate was drawn the trustees thought that Section 3083 applies for the purpose of making this release. Referring back to said Section 3080, it will be noted that the release authorized under this section only applies to mortgages or deeds of trust that are given by a railroad company or other public utility company which is subject to the regulation of the Public Service Commission. As stated above, the Public Service Commission of this state does not regulate the Cities Service Gas Company and, therefore, said section does not apply to such releases.

CONCLUSION.

It is, therefore, the opinion of this department that the release of the mortgage which was submitted to you by the trustees of the Cities Service Gas Company should be made as provided for in said Section 3083, Laws of Missouri, 1933, page 194.

Respectfully submitted

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

TYRE W. BURTON
Assistant Attorney General

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