

Opinion No. 59-49

May 13, 1959

BY: FRANK B. ZINN, Attorney General

TO: Honorable Paul W. Robinson District Attorney Second Judicial District Bernalillo County Court House Albuquerque, New Mexico

Sales of corporate stock for cash or on credit to employees of issuing corporation are subject to provisions of Blue Sky Law, except sales made to employees already owning stock in the employer.

OPINION

{*75} This is in reply to your request for an opinion on the following questions:

{*76} Are sales of corporate stock, either for cash or on credit, to employees of the issuing corporation subject to the registration provisions of the Blue Sky Law?

If there are any exceptions relative to sales to employees, what are they?

It is my opinion that sales of corporate stock, either for cash or on credit, to employees of the issuing corporation, are subject to the registration provisions of the Blue Sky Law. I have found one exception, namely, in the case of sales to employees already owning stock of the issuing employer, as provided in Section 48-18-22 (d) N.M.S.A., 1953 Compilation, 1957 Supplement.

Your questions arise in part because of the proviso of Section 51-3-13, which reads:

"Provided, however, that corporations organized under the provisions of this article shall be authorized to sell on credit, to one (1) or more of its employees, shares of its capital stock not in excess of one-third of the fully paid-in shares of the class of its capital stock of which such shares so sold on credit form a part; Providing, further, that the corporation shall retain possession of its shares of stock so sold on credit, until the same shall have been fully paid for."

As is apparent, this permits certain New Mexico corporations to make credit sales of stock to their employees, on certain conditions. It does not, however, make reference to the Blue Sky Law.

The latter is compiled as Sections 48-18-16 et seq., N.M.S.A., 1953 Compilation, 1957 Supplement. In my opinion, a comprehensive system relative to the regulation of securities and security dealers is provided. Section 48-18-19 (P.S.) makes illegal the sale of any securities in New Mexico, with certain exceptions, unless registered under that section and a permit issued. Section 48-18-21 (P.S.) exempts certain securities,

among which are those listed or regularly approved for listing on the New York Stock Exchange, the Midwest Stock Exchange, the American Stock Exchange, or other duly approved stock exchange.

Section 48-18-22 (P.S.) exempts certain transactions from the registration requirements of Section 48-18-19. Of particular interest in answer to your two questions is subsection (d) providing:

"Stock dividends or other distributions by a corporation out of its earnings or surplus; or the issuance of securities to existing security holders or creditors of a corporation in a bona fide reorganization, merger or consolidation of such corporation either in exchange for the securities or claims of such security holders or creditors, or partly in exchange therefor and partly for cash; or the sale or distribution of **additional** securities of a corporation to or among its own security holders or employees, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to security holders other than commission or compensation paid or given for an undertaking to purchase any of such securities not purchased by such security holders."
(Emphasis mine)

You will observe that only the sale of **additional** securities to employees is exempted, hence my conclusion the exemption is only operative as to sales to employees already owning stock in the issuing employer.

Robert F. Pyatt

Assistant Attorney General