

Opinion No. 23-3686

March 31, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: State Bank Examiner, Blue Sky Department, Santa Fe, New Mexico.

Blue Sky Law Requires Filing of Statement and Deposit of Certain Stock.

OPINION

{*32} You have submitted to this office for our opinion the questions propounded by Judge Clarence J. Roberts in his letter to you under date of March 28, last. The questions are:

"Whether or not the Blue Sky Law permits the sale by Matlock and his associates of their stock, and whether or not the law requires any deposit of stock with the State Bank Examiner."

From the statement of Judge Roberts we conclude that a Colorado corporation has already issued and sold to Matlock and his associates all of its stock, they now being the owners of the Corporation. We assume but, of course, do not know, that the Corporation is organized to promote the prospecting for oil in the Gallup (N. M.) region. We also conclude that Matlock and his associates expect to sell the stock in question so that the same will be included within the term "Speculative Securities" as defined by our Statute. It would be quite impossible for us to give you any intelligent opinion in connection with the case until the parties have filed a statement as required by Section 2 of the Blue Sky Law. We think you should advise Judge Roberts to have parties file this statement.

We think the law as found in the latter portion of Section 4 of the Blue Sky Law contemplates all stock or securities issued in payment of property shall be filed with the State Bank Examiner until the securities for which the permit was issued have been sold. {*33} The law seems not to contemplate that all of the stock, as in this case, would be issued and transferred in payment of property. It is barely possible the stock in question was not issued to parties in payment of property but transferred to them subsequent to issue in exchange for same. Since all of the stock has been transferred to Matlock and his associates, however, it might be the parties could deposit other securities, satisfactory to the State Bank Examiner, in lieu of the stock -- a deed to the property or other securities as defined by Section 1 of the Blue Sky Law might suffice. The latter portion of said Section 4 provides for the deposit of stock **or** securities but also contemplates a sale of the stock for which the permit is issued. This course might be followed or assignments of the stock so on deposit sold with the permission of the State Corporation Commission.

The law, of course, prohibits the sale of stock by any officer or director of the corporation on a commission or for a consideration.

In conclusion, we shall say that the parties shall be required to comply with the law by filing their statements as provided by Sec. 2 of the Act in question. We think also a deposit of stock is necessary. After complying with the law in its various details, we think a permit may issue in this case.