

Opinion No. [30-04]

February 13, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. Charles L. Strouss, Assistant Attorney General, State Capitol, Phoenix, Arizona.

BLUE SKY LAW -- Speculative securities.

OPINION

I am in receipt of yours of the 11th inst. in which you ask for an interpretation of the New Mexico Blue Sky Law, particularly the term "speculative securities", and you ask whether or not stocks listed on the New York Stock Exchange and in New York curb market, or foreign stock exchanges, are classified as speculative or non-speculative securities under our Blue Sky Law, and whether reputable brokers selling stock listed on such markets are required to secure permits before the stock can be sold.

By section 1 of chapter 44 of the Session Laws of 1921, which is now compiled as 32-701 of the 1929 Compilation, speculative securities are defined as follows:

"All securities to promote or induce the sale of which, profit, gain or advantage unusual in the ordinary course of legitimate business, is in any way advertised or promised;"

Section 13 of the act, 32-713 of the Compilation of 1929 is as follows:

"To whom act does not apply. This act shall not apply to the owner of any speculative security who is not the maker or issuer thereof, who shall acquire and sell the same for his own account in the usual and ordinary source of business, and not for the direct or indirect promotion of any enterprise or scheme within the purview of this act; Providing, that such ownership is in good faith. Repeated or successive sales of any such speculative security or securities shall be prima facie evidence that the claim of ownership is not bona fide, or is a mere shift or device to evade the provisions of this act: Provided, that this section shall not be construed to exempt from the provisions of this act brokers and stock exchanges and members thereof engaged in the purchase, handling and sale on the market of speculative securities, either as owners or for a commission, but this act shall apply to such brokers and stock exchanges and members thereof."

The administration of this act devolves on the State Bank Examiner and it is unlawful to sell or offer for sale speculative securities until they have been approved by him and his permit secured. Under his interpretation of the sections above quoted for the sale of any securities which fall within the definitions of speculative securities, no matter where listed or by whom sold, a permit must be obtained. Brokers selling stock listed in the big

exchanges sometimes handle as many as 150 or 200 different stocks, in such cases it is impossible for the Bank Examiner to thoroughly investigate each stock offered for sale. Consequently he confines his investigation more particularly to the brokers themselves and their manner of doing business, feeling that in the big stock exchanges no stocks will be listed except those having something behind them.

I trust the foregoing will answer your questions but if not and I can be of any further assistance, kindly write again.