

Opinion No. 33-581

April 18, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. R. W. Heflin, Special Assistant, Blue Sky Department, Santa Fe, New Mexico.

{*38} Your letter of April 18, 1933 has reference to the sale of speculative securities by out-of-state firms in this state by means of advertisements in the press or by solicitation through the mail.

Under a strict interpretation of Section 32-702 of the 1929 Code it would appear that such transactions are unlawful without compliance with our Blue Sky Law. It might be suggested however that sales of this kind are not subject to regulation by the state, owing to their interstate character. Such a condition is answered, in my opinion, by Justice McKenna in *Hall vs. Geiger-Jones Co.*, 242 U.S. 539, 61 L. Ed. 480 in which he makes the following statement:

"The next contention of appellees is that the law under review is a burden on interstate commerce, and therefore contravenes the commerce clause of the Constitution of the United States. There is no doubt of the supremacy of the national power over interstate commerce. Its inaction, it is true, may imply prohibition of state legislation, but it may imply permission of such legislation. In other words, the burden of the legislation, if it be a burden, may be indirect {*39} and valid in the absence of the assertion of the national power. So much is a truism; there can only be controversy about its application. The language of the statute is: 'Except as otherwise provided in this act, no dealer shall, within this state, dispose' of certain securities 'issued or executed by any private or quasi public corporation, copartnership or association (except corporations not for profit) . . . without first being licensed so to do as hereinafter provided.'

"The provisions of the law, it will be observed, apply to dispositions of securities within the state, and while information of those issued in other state and foreign countries is required to be filed (6373-9), they are only affected by the requirement of a license of one who deals in them within the state. Upon their transportation into the state there is no impediment, -- no regulation of them or interference with them after they get there. There is the exaction only that he who disposes of them there shall (558) be licensed to do so, and this only that they may not appear in false character and impose an appearance of a value which they may not possess, -- and this certainly is only an indirect burden upon them as objects of interstate commerce, if they may be regarded as such. It is a police regulation strictly, not affecting them until there is an attempt to make disposition of them within the state. To give them more immunity than this is to give them more immunity than more tangible articles are given, they having no exemption from regulations the purpose of which is to prevent fraud or deception. Such regulations affect interstate commerce in them only incidentally."

There is a further question however which must be considered in this connection, and that is as to whether or not in cases such as mentioned by you the "sale" occurs "within this state." In most cases I presume that the sale does not occur within this state. The general rule is that a contract is "considered as entered into at the place where the offer is accepted or where the last act necessary to complete it is performed." 13 C.J. 580. If delivery of the securities is necessary to complete the sale, delivery occurs when the securities are placed in the mail, addressed to the purchaser. 8 C.J. 204. This would happen in most cases outside of the state.

Even if in some cases sales would actually occur in this state the problem of enforcement would be difficult where the company has no agents or representatives in the state.

Trusting that this satisfactorily disposes of the matter mentioned by you, I am

By: QUINCY D. ADAMS

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