

**Opinion No. 44-4445**

January 27, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. R. W. Heflin, Securities Commissioner, State Banking Department, Santa Fe, New Mexico

In your letter dated January 26, 1944, you enclose the Articles of Incorporation, Trust Agreement and Auditor's Report on the Diversified Fund Corporation and inquire whether this corporation should be required to continue to operate under a Blue Sky permit or should it be only under the provisions covering investment certificates, etc.

The company is no longer selling investment certificates under its original permit. However, once these certificates have been sold Section 50-1505 requires the person holding such a permit thereafter to make reports to the State Bank Examiner.

Under the Trust Agreement the Trustee buys and sells securities under the direction of this corporation. I do not know whether the Trustee takes title in his own name as Trustee or in the name of the corporation. In either event he would be acting merely as the Agent of the corporation the Blue Sky permit should continue to be required in view of the provisions of Section 50-1714 of the 1941 Compilation, which are in part as follows:

"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."

I am enclosing herewith the papers enclosed with your letter.

By C. C. McCULLOH,

First Asst. Atty. General