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OFFICE OF THE ATTORNEY GENERAL
State Capitol
Salt Lake City 14, Utah

November 29, 1956

District Attorney
Second Judicial District
305 Kiesel Building
Ogden, Utah

REQUESTED BY: L. Roland Anderson, District Attorney, Second Judicial District.

OPINION BY: E. R. Callister, Attorney General;
Raymond W. Gee, Assistant Attorney General.

QUESTION: Is the proposed Memorial Trust Agreement of the Aultorest Memorial Corporation a security under the Utah law?

CONCLUSION: Yes.

It is our opinion that the agreement which you have submitted to us, and which is entitled "Insured Memorial Trust Plan A Pre-Arrangement Agreement" of the Aultorest Memorial Corporation is a security and as such must be registered with the Securities Commission of Utah. Section 61-1-4, U.C.A. 1953, provides in part as follows:

- (1) "Security" shall include * * * any transferable share, investment contract, service certificate, burial certificate or burial contract; * * * (Emphasis added.)

In the case of Memorial Gardens of the Valley v. Love (Utah), 300 P.2d 628, the Supreme Court of the State of Utah defined "burial contract" and "burial Certificate" as used in the foregoing statute. The court stated:

The terms "burial contract" and "burial certificate" import an arrangement for morticians' services, embalming, funeral and interment services which may or may not include the burial lot.

The agreement in question provides in part:

For the purpose of providing money for any funeral and/or burial expense I, the undersigned, do hereby agree with the Aultorest Memorial Corporation that I will pay to them \$ _____ which is the face value of this agreement. It is ~~mutually~~ understood that in the event of my death the Aultorest Mortuary will perform all the rights and services connected with my funeral.*** (Emphasis added)

Applying the foregoing legal authority to the terms of the agreement, we are of the opinion that the document in question is a security within the contemplation of Section 61-1-4, U.C.A. 1953, and as such is subject to the Securities Act of this state.

Furthermore Section 61-1-4, U.C.A. 1953, defines "security" as including "any other instrument commonly known as a security ***." The Memorial Gardens case, Supra, quotes authority to the effect that a security is "a written assurance for the return of money." The trust plan includes the provision: "I understand and agree that the interest on my savings will begin to accrue at the first interest date occurring after the sixth month my contract has been in force." It would therefore appear that the agreement also falls within the general definition of a "security."

We are of the conclusion that the trust plan agreement which you have submitted to us is a security within the contemplation of Section 61-1-4, U.C.A. 1953, first because it falls within the definition of a "burial contract" or "burial certificate" and secondly, because the agreement is a "security" under the commonly accepted definition of the term. Proper registration with the Security Commission is therefore required.

Very truly yours

(Signed) E. R. CALLISTER
Attorney General

RWG/jlt