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THE STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL
SALT LAKE CITY

December 19, 1949

M. H. Love, Director
Securities Commission
Dept. of Business Regulation
B u i l d i n g

Dear Mr. Love:

This is in reply to your letter dated November 5, 1949, requesting an opinion from this office interpreting various provisions of the Blue Sky Laws of the State of Utah.

Your first inquiry is as to whether or not, under the provisions of Section 82-1-5 (4) Utah Code Annotated 1943, exempting certain securities from the requirement of registration with the State Securities Commission, the term "corporation" includes a "voluntary association" created under Chapter 182 of the Annotated Laws of Massachusetts.

Section 82-1-5 (4) Utah Code Annotated 1943, provides in part:

"Any security issued, or guaranteed either as to principal, interest, or dividends, by a corporation owning or operating a railroad or any other public service utility, provided that such corporation is subject to regulation or supervision as to the issue of its own securities by a public commission, board or offices of the government of the United States, or of any state, territory or insular possession thereof, or of any municipality located therein, or the District of Columbia, or of the Dominion of Canada or any province thereof; * * * ."

Chapter 182, Annotated Laws of Massachusetts defines the term "association" as "a voluntary association under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares." While the term "corporation" is not defined anywhere in the Blue Sky Laws of the State of Utah, it is defined generally in Article 12 Section 4 of the Constitution of the State of Utah as including "all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or partnerships * * * ".

Dec. 19, 1949

I am of the opinion that the exemption provisions of Section 82-1-5 (4), Utah Code Annotated 1943, should be interpreted as including the securities of a "voluntary association" created under the laws of Massachusetts provided, however, the association meets all the other requirements of Section 82-1-5 (4). In this connection we point out that the Public Service Commission of Utah has no specific statutory authority to regulate or supervise the issuance of securities by utilities in this State.

With reference to your second inquiry as to whether or not the exemption provided in Section 82-1-5 (4) includes the securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, where such company is subject to the supervision of the Securities and Exchange Commission as to the issuance of the securities involved, may I direct your attention to an opinion rendered by this office to your department on December 30, 1949. At that time the Attorney General ruled that: "It is my opinion that securities issued by a public utility whose issuance of securities is supervised by the Securities and Exchange Commission of the United States would be exempt from regulation in this state." Although that opinion referred particularly to securities issued by a "public utility," I am of the opinion that the exemption applies equally to the securities issued by a "public utility holding company." In both instances the mischief which the law was intended to prevent would appear to be taken care of by the surveillance over the issuance of such securities by the Securities and Exchange Commission. I am, therefore, of the opinion that securities issued by a "public utility holding company" registered under the Public Utility Holding Company Act of 1935 which is subject to the supervision of the Securities and Exchange Commission of the United States as to the issuance of securities, are exempt from registration with the State Securities Commission under the provision of Section 82-1-5(4).

Finally you inquire as to whether or not Section 82-1-5 (9), Utah Code Annotated 1943, includes "an additional issue of stock of the same class as previously outstanding stock which is fully listed and dealt in on the New York Exchange where the additional issue is 'listed upon notice' of issuance." Section 82-1-5 (9) Utah Code Annotated 1943, provides:

"Securities appearing in any list of securities dealt in on any recognized and responsible stock exchange which has been previously approved by the Commission, if such securities have been so listed pursuant to official authorization by such exchange, and also all securities senior to any securities so listed, and evidences of indebtedness

Dec. 19, 1949.

guaranteed by companies any stock of which is so listed; such securities to be exempt only so long as such listing shall remain in effect; provided, that the state securities commission at any time within its discretion may suspend or revoke this exemption in so far as it may have application to any particular security or securities, and to that end any and all securities coming exclusively within the provisions of this subdivision shall for all purposes of suspension, revocation, or prohibition be deemed a registered security as provided for under section 82-1-9."

It will be noted that the exemption provisions of this section relate to "securities * * * so listed * * * and also all securities senior to any securities so listed * * ". In an opinion to your department dated November 4, 1949, this office stated that "the exemption provisions of subsection 9 (Section 82-1-5) contemplate only 'fully listed' securities and not securities for which there is merely an agreement 'to list' or which have been approved 'for listing' by a recognized and responsible stock exchange."

In line with the above I am of the opinion that the additional issue of stock of the same class as previously outstanding and fully listed stock does not come within the provisions of Section 82-1-5 (9) so as to be exempt from registration until such time as the additional issue has likewise been fully listed with a recognized and responsible stock exchange which has been previously approved by the State Securities Commission.

Very truly yours,

CLINTON D. VERNON /s/

CLINTON D. VERNON,
Attorney General.

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