

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

December 23, 1946

Mr. Lawrence Taylor, Director
Securities Commission
Department of Business Regulation
B U I L D I N G

Dear Mr. Taylor:

You have referred to this office for an opinion, information regarding a proposed issuance and sale of \$500,000 in 5 per cent debentures by Pacific States Cast Iron Pipe Company. You desire to know whether or not it will be necessary for the company to register these securities before offering them for sale.

According to the information in the possession of this office \$200,000 of these debentures will be issued on January 1, 1947, and additional sums up to the \$500,000 will be issued from time to time thereafter. There will be no underwriter of the proposed debentures and no commission will be paid for the sale of the same. The entire issue is to be sold to stockholders and officers of the McWane Cast Iron Pipe Company in Birmingham, Alabama, of which company the Pacific States Cast Iron Pipe Company is a subsidiary. No offer of any kind will be made to the general public.

Section 82-1-6, Utah Code Annotated, 1943, provides in part as follows:

"Except as hereinafter expressly provided, the provisions of this chapter shall not apply to the sale of any security in any of the following cases:

(3) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account; such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner or representative not being the underwriter of such security.

The provisions of this subdivision shall not apply in any case of sale where the issuer shall have taken the entire stock of a company in payment for mining claims, patent rights, copyrights, trade-marks, process, lease, formula, oil lease, good will or any other property right or any other tangible or intangible asset which may be construed as a promotion interest, or where funds received from the sale of such security may be used directly or indirectly for development purposes."

It is the opinion of this office that in order to be an isolated transaction it is not necessary that a transaction be the only one of its kind. In order to determine whether or not a particular transaction actually comes within this section, it is necessary to consider the entire scope of the Securities Act. This act was obviously made for the purpose of protecting the public against the public offering for sale of securities which do not offer a sound investment. The isolated transactions exception was included because the Legislature evidently felt that where an offer was to be made only to a few individuals and not to the general public, such individuals would probably be in a better position than would the state to determine the backing of the particular security involved.