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UTAH STATE  
SECURITIES COMMISSION

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL  
SALT LAKE CITY

July 20, 1964

A. PRATT KESLER  
ATTORNEY GENERAL

*Isolated Sale*

Mr. Wm. G. Hardy, Director  
Securities Commission  
Department of Business Regulation  
Building

Dear Mr. Hardy:

We are in receipt of your letter of May 19, 1964, wherein you refer to the Mid-West Corporation proposed stock distribution plan. The material accompanying your letter indicates that it concerns a stock corporation organized with the intent of trading its capital stock for the mineral rights of adjoining and adjacent land owners in specific geographic locations. Evidently the corporation is not organized for the purpose of accomplishing this objective in only one instance but it may be repeated on a number of occasions in various geographical areas.

The soliciting party claims that the offering is not covered under the securities act and asks for approval of the program and confirmation of its exempt nature.

The information received does not indicate specifically the reasons upon which the applicant relies to show that the corporation is exempt from registration. He does say that the proposal is not in the nature of public offering of securities. It also appears that there may be some claim that the offering is exempt under Utah Code Annotated, 1953, as amended in 61-1-14 (2)(a), exempting isolated transactions.

Utah Code Annotated, 1953, as amended in 61-1-7,  
states:

"Registration before sale - It is unlawful for any person to offer or sell any security in the state unless it is registered under this act or the security or transaction is exempted under section 61-1-14."

Mr. Wm G. Hardy  
July 20, 1964  
Page # 2

A "sale" by definition, Utah Code Annotated, Section 61-1-13, as amended, subsection (10), (a) and (b):

"(a) The words "sale" or "sell" include every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(b) The words "offer" or "offer to sell" include every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value."

The suggested plan proposes to exchange corporate stock for mineral rights in transactions which involve a number of land holders. Even though the mineral rights may not be subject to an objective appraisal it is clear that the mineral rights for which the stock is proposed to be issued, constitutes a valuable consideration. The proposed plan would then fall under the registration requirements of the Utah Securities Act unless exempt under 61-1-14.

Without a detailed analysis of the exemptions, it would appear that the only provision on which the proposed plan might be exempt is 61-1-14 (2) (a) which exempts:

"Any isolated transaction, whether effected through a broker dealer or not."

Our statute and court decisions have not defined an isolated sale or transaction, however in a letter from this office under the date of May 8, 1944, the Attorney General, Grover A. Giles, quoted the case of Kneeland vs. Everton, 280 Mass. 371, 183 N.E. 155. That summary is here repeated:

"We think that two sales of securities, made one after the other within a period of such reasonable time as to indicate that one general purpose actuates the vendor and that the sales promote the same aim and are not so detached and separated as to form no part of a single plan, would be repeated and successive transactions."

Although the Utah Code has been altered by the session laws of 1963, there is no indication that the above analysis

Mr. Wm. G. Hardy  
July 20, 1964  
Page # 3

of the isolated transaction should not continue to be valid.

In the instant case the corporation admits that its purpose is to contact land holders and exchange corporate stock for mineral rights. Such stock is a security, exchanged for a valuable consideration. There is no limit to the proposed number of contemplated transactions.

We feel therefore that the proposed plan is not exempt under the statute.

We trust that this information will be helpful.

Very truly yours,

A. PRATT KESLER  
Attorney General



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LORIN N. PACE  
Assistant Attorney General

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