

THE STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL
Salt Lake City, Utah.

October 27, 1939.

Honorable E. E. Monson, Chairman
Utah Securities Commission
B U I L D I N G

Dear Dr. Monson:

This is to acknowledge receipt of your letter of October 23rd, wherein you submit the following:

"82-1-15, Revised Statutes of Utah, 1933 in part states: 'No dealer or salesman shall engage in business in this state as such dealer or salesman, or sell any securities, including securities exempted in section 92-1-5, except in transactions exempt under section 82-1-6, unless he has been registered as a dealer or salesman in the office of the commission pursuant to the provisions of this section...'"

"82-1-5 provides for the exemption from registration of certain securities set out in said section.

"82-1-6 provides for exempted sales. This section begins by saying: '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 ...' And this is followed by nine subdivisions.

"Subsection 5 specifically bears upon the question at issue."

Based on the foregoing excerpts of the Securities Law, you have submitted the following inquiries:

"(A) If an individual or firm acts as agent only for municipalities in the preparation and disposal of bonds, either original or refunding, and negotiates as said agent for the sale of said bonds or the exchange either for cash or original bonds in a refunding issue to departments of State, such as the Land Board, Industrial Commission, Board of Education, etc. would such acts as such agent be exempt as provided in the Securities Act, or would such individual or firm be required to have license as a Dealer with the Securities Commission?"

"(B) If such individual or firm buys all or a portion of said bonds, whether original or refunding for himself or itself, and then sells such bonds in whole or in part to subdivisions of the State, such as the Land Board, Industrial Commission, Board of Education, etc. would such acts be exempted from registration as provided in 82-1-6 or would it be necessary for such individual or firm to first be licensed as a dealer as set out in the Securities Act?"

In order to analyze your problem intelligently, it is necessary to refer rather fully to certain sections of the Securities Law. In the first place, while municipal securities are securities within the meaning of the definition of securities set forth in Section 82-1-4, Revised Statutes of Utah, 1933, and while it further clearly appears that municipalities fall within the definition of "Issuer" as found in subdivision 5 of said section 82-1-4, for the term "issuer" as set forth in subdivision 5 aforesaid shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any security as hereinbefore defined, and "person" is defined in subdivision 2 of said Section 82-1-4, to include a political subdivision of this State, nevertheless in Section 82-1-5, it must be observed that municipal securities under subdivision 1 are expressly exempted or excepted from the Securities Law, except as otherwise expressly provided.

Now let me refer the reader to Section 82-1-17, Revised Statutes of Utah, 1933, providing for the registration of agents. That section reads:

"No person shall engage in business in this state as agent to sell securities of an issuer unless he has paid a fee of \$5 and has been registered as an agent in the office of the commission. Every agent before selling, offering to sell, or advertising the sale of, any security of an issuer shall file in the office of the commission an application for registration in writing in such form as the commission may prescribe, duly verified by oath, which shall state the office or principal place of business of the issuer and the character of the security to be sold. If the commission shall find that the applicant is of good repute and has complied with the provisions of this section, it shall register such applicant as an agent."

It will be observed that nowhere in this section appears any language which would indicate that municipalities have been brought within the meaning of the term "issuer" as it has been defined in the statute. In other words, it cannot be said with any degree of certainty or clarity that securities of an "issuer" as set forth in Section 82-1-17 is intended to include municipal securities which have already been exempted under Section 82-1-5 aforesaid. So that I feel confident that I may say at this point, in answer to your first inquiry, that as long as such individual or firm acts as agent only of the municipality in the sale of its securities to any of the State Departments, such individual or firm need not be registered with the Securities Commission.

Now let us turn our attention to the provisions of Section 82-1-15, Revised Statutes of Utah, 1933, which provides, among other things, the following:

"No dealer or salesman shall engage in business in this state as such dealer or salesman, or sell any securities, including securities exempted in Section 82-1-5, except in transactions exempt under Section 82-1-6, unless he has been registered as a dealer or salesman in the office of the commission pursuant to the provisions of this section."

Then follows specific provisions for requiring every dealer before engaging in business in this State to file an application with the Securities Commission for registration. In that application such dealer is required to register the salesmen which such dealer shall employ.

Now getting back to your inquiry again, it is clear to the writer that if the individual or firm representing the municipality as agent in the sale of its securities is a dealer or salesman within the purview of Section 82-1-15 aforesaid, then such individual or firm must be registered as provided in said Section 82-1-15, for a careful analysis of the provisions of Section 82-1-6 indicates that a sale of municipal securities to any of the State Departments is not a transaction exempt under Section 82-1-6, and unless such a sale to any of the State Departments can be brought within the purview of Section 82-1-6, such municipal securities are placed in the same category as any other security required to be registered with the Securities Commission.

Since your Commission is thoroughly acquainted with the provisions of Section 82-1-6 I feel it unnecessary to set them forth in this opinion. Subdivision 5 of said Section 82-1-6 has been called to my attention particularly. I shall, therefore, set forth its provisions for the benefit of the reader:

"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:

'1....'2....'3....'4....'5 The sale, transfer or delivery to any bank, savings institution, trust company, or to any corporation or to any broker or dealer; provided, that such broker or dealer is actually engaged in buying and selling securities as a business."

Coming now to the inquiry, if such individual or firm buys all or a portion of said bonds, whether original or refunding for himself or itself, and then sells such bonds in whole or in part to subdivisions of the State, such as the Land Board, Industrial Commission, and so forth, would such acts be exempted from registration as provided in 82-1-6 or would it be necessary for such individual or firm to first be licensed as a dealer as set out in the Securities Act, I am of the opinion that unless it can be said that such a sale falls within one or more of the exceptions set forth in Section 82-1-6, such individual or firm referred to in your inquiry would have to secure a permit to sell, as provided in Section 82-1-15

In my examination of the provisions of Section 82-1-6, I find one provision to-wit: in subdivision 3, which would be applicable to the sale of municipal securities to any of the State Departments. I refer to an isolated transaction in which my 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 on his account by such representative, and such owner or representative not being the underwriter of such security.

Manifestly, a person, including a firm, partnership or corporation within the meaning of the term "person" as defined in sub-division 2 of Section 82-1-4, aforesaid, may purchase securities from a municipality and sell them to a State Department without a license to do so from the Securities Commission as an isolated transaction, but the repeated and successive sale of such municipal securities is forbidden by the Securities Act unless a license as a dealer or salesman is secured from the Securities Commission.

Yours very truly,

(Signed) G. A. GILES
Assistant Attorney General

Approved:

(Signed) JOSEPH CHEZ
Attorney General

5:ej
b