

OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CITY 1, UTAH

1144

September 22, 1949.

C
L. Taylor, Director
Securities Commission
Department of Business Regulation
B u i l d i n g .

O
Dear Mr. Taylor:

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This is in reply to your letter of July 25, 1949, in which you enclose (1) a service dividend certificate issued by the Aultorest Memorial Corporation of Ogden, (2) an agreement to purchase burial lots, and (3) an agreement to purchase burial property, and in which you ask whether or not these instruments would be subject to regulation by the Securities Commission.

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Section 82-1-4(1) Utah Code Annotated 1943, so far as material, provides:

"'Security' shall include * * * any transferable share, investment contract, service certificate, burial certificate or burial contract; * * * certificate of membership in, contract or agreement given, made or issued by any corporation, association or organization wherein a discount, reduction in price or other advantage, privilege or right in or to the purchase of merchandise are held out or agreed to be given or made; * * * ."

Enclosure (3), though headed "Agreement to Purchase Burial Property," is, as a study thereof will show, more than that. It is in fact also a burial contract, in that the corporation promises to perform burial services under certain terms and conditions, even promising to waive future payments in event of death of the purchaser. It is our opinion that this is a security within the above statutory definition.

Enclosure (1), called a "service dividend certificate" is a promise by the corporation, in consideration that the promisee purchases burial property from the corporation, to perform burial services at a reduced price. It appears to be a part of or supplement to the contract form enclosure (3), and would, we believe, come within the above quoted definition of a security.

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Enclosure (2) is called an "Agreement to Purchase Lot", and appears to be a form of real estate contract under section 82-2-2, Utah Code Annotated 1943.

It may be noted that enclosures (2) and (3) both appear to be contracts to purchase real estate within the provisions of chapter 2, title 82, Utah Code Annotated 1943, and particularly sections 1, 2, 3 and 4 of that chapter, and therefore the selling or negotiating of these contracts would come within the provisions of that act.

It would appear from chapter 82-1, Utah Code Annotated 1943, that the securities commission has no power to prosecute for non-registration of securities. However, its duty in event it has information of such violation is set forth in section 82-1-27 Utah Code Annotated 1943, which provides:

"The director shall at once lay before the county attorney of the proper county any evidence which shall come to his knowledge of violations of this chapter. In the event of the neglect or refusal of such county attorney to prosecute such violations, the director shall submit such evidence to the district attorney, who shall proceed therein with all the rights, privileges and powers conferred by law upon county attorneys."

It would further appear that violations of the real estate brokers' law, chapter 2, Title 82, are offenses punishable as crimes, rather than by action of the commission, under section 82-2-17 Utah Code Annotated 1943.

Very truly yours,

CLINTON D. VERNON,
Attorney General.

ABC/ba