

THE ATTORNEY GENERAL



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May 15, 1974

MAY 16 1974

Utah Securities Commission
Department of Business Regulation
BUILDING MAIL

Attention: Ardell

- RE: 1) TERMINATING SALES SHORT
2) WITHDRAWING FILES FROM COURTS
(Procedure)
3) WESTERN INVESTORS LTD.
4) SECURE SAVINGS, INC.

Re: Miscellaneous Questions

Dear Ardell:

I thought with this letter that I would consolidate some of your inquiries into one communication. First, on April 23, 1974, you inquired as to the status or interpretation of Section 61-1-11(8) concerning withdrawing a registration. It would be my feeling that the one-quarter escrow requirement is a procedure that has apparently been adopted as a policy of the Commission. I see nothing in the statute that provides for such requirement, the statute making it discretionary with the Commission.

Therefore, should the Director determine that the one-quarter escrow fund criterion was insufficient and that in fact such procedure was ultra vires of his dilution requirements, I believe it would be within his power to refuse withdrawal. Particularly that would be within his power based on your representation that Mr. Bennett either had a requirement, or has a requirement, that investors hold sixty percent of a company's stock. Probably a more realistic criterion would be that a registration statement cannot be withdrawn until investors hold sixty percent of the stock in the venture. Certainly, it

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is within the Director's discretion and absent an abuse of that discretion, he would be well within his power to require the sale of more than one-fourth of the stock prior to withdrawal.

On May 13, 1974, we received an inquiry from you concerning procedures in withdrawing files of the Securities Commission from case records filed with the court clerk. I consulted with the Clerk of the Third Judicial District Court and was informed that such withdrawal requires an order of the judge. Therefore, I believe a proper or workable procedure would be to initiate by motion from the Securities Commission a request for such records' withdrawal, which motion and accompanying order could be tendered to any one of the judges of the Third Judicial District Court, which judge, by signing the order, would thereby authorize the clerk to turn over the records back to the Securities Commission. A procedure therefore could be: the drafting of a motion and order signed by the Director for tender to an appropriate judge, and then tendering that signed order to the clerk of the court for return of the records.

Additional to the questions covered above, I have received two inquiries from the Director, William Sargeant, concerning first Western Investors Limited Associates and second, Secured Savings. As to Western Investors Limited, I contacted a Mr. F. Grant Woodward, Secretary-Treasurer and Director of the company, who informed me that: they were in fact not attempting to secure investors; that they sold no interests; and that they would discontinue their practice. I required that he forward me a letter to that effect, which letter I have not yet received.

As to Secured Savings, after a review of their disclosure and appropriate sections of the Utah Code concerning banking, I forwarded the disclosure to Wright Volker of our

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office who represents Banking. He and I consulted on the matter and at this point believe that it would qualify for regulation under the statute and the information you tendered to me was thereafter conveyed to Banking for their action. It appears, at this point, that the plan could and should be regulated by Banking and an informal hearing into the matter will be called by them in the near future.

I hope that the above clears up all the pending outstanding questions and catches us up. If you have any further questions or wish clarification, please do not hesitate to call on me.

Very truly yours,



M. REID RUSSELL

Assistant Attorney General

MRR/sh