



THE ATTORNEY GENERAL  
STATE OF UTAH

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May 17, 1983

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Tax & Business Regulation Division

Craig F. McCullough, Director  
Utah Securities Division  
Department of Business Regulation  
Heber M. Wells Building  
BUILDING MAIL

Re: Allowance of Registration by Coordination when  
Registration Statement is filed under prior law.

Dear Craig:

As I indicated to you in our telephone conversation of yesterday, a position refusing to acknowledge the effectiveness of a 504 filing which was received by your office a day prior to the effective date of the amended Utah Uniform Securities Act is defensible but not compelling. My research indicates that under these circumstances, public policy would favor the effectiveness of the filing because it was done at a time when the former law was in effect and made in reliance upon that law. I have given consideration to the court's aversion to the apparent retroactivity of the new statute in this situation. Unless, therefore, there is some compelling reason to either find that the filing itself was incomplete, therefore rendering it faulty and ineffective, or we could establish that there were specific deficiencies with the filing itself, I believe that the Division is bound to allow it to be effective upon receipt of proper notification.

I base my conclusions primarily upon the fact that the law in effect when the statement was filed permitted such registration by coordination. Arguably, the filing was made with the knowledge that the new law was going into effect, but most certainly would be defended upon the grounds that it was done so with reliance upon the former law. Not only that, I am sure it could be argued that he couldn't get it in any sooner, and there is not justifiable harm to the public.

Craig McCullough  
May 17, 1983  
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Such a reliance upon the law which was in effect at the time the filing was made is an argument generally bought by the court's, who appear to disdain allowing any statutes to be retroactively applied. See Goodman v. Kennedy, 556 P.2d 737 (Cal. 1976), Oakland Construction Company v. Utah State Industrial Commission, 520 P.2d 208 (Utah, 1974), McCarrey v. Utah State Teachers Retirement Board, 111 Utah 251, 177 P.2d 725 (1947), and Peterson v. State Tax Commission, 106 Utah, 337, 148 P.2d 340 (1944), which are obviously distinguishable on the facts, yet appear to give a general feeling as to retroactivity of statutes to situations arguably covered within the purview of conflicting legislation.

Under that former law, registration is effective automatically after the expiration of ten days and upon receipt of proper notification. No order from the Division is therefore necessary to provide that effectiveness. Because no order is necessary, there is no necessity of contradicting yourself in allowing something which you might believe to be, in principle, violating public policy.

There also appears to be no reason to issue a stop order denying its effectiveness due to the absence of any evidence that it is incomplete, misleading, fraudulent, illegal, etc., as required under sub-section 12.

Very truly yours,



JOHN C. BALDWIN  
Assistant Attorney General  
Tax & Business Regulation Div.

JCB/cb