

THE ATTORNEY GENERAL



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DEPARTMENT OF
BUSINESS REGULATION

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June 19, 1981

INFORMAL OPINION NO. 81-70

Re: Escrow of Stock Held by
Utah Securities Commission

The Attorney General's Office has been asked by the Utah Securities Commission to determine whether or not stock, purchased with intangible assets and held in escrow pursuant to statutory provisions of the Utah Uniform Securities Act which were repealed in 1963, can now be released. The concern of the Utah Securities Commission is that the former statutory provisions required that, prior to a release of the stock, a fifteen percent dividend be paid to other holders of that same stock not parties to the escrow agreement.

The Utah Uniform Securities Act, before its revision in 1963, stated in §61-1-23 that the Utah Securities Commission

. . . may require that such securities so issued in payment of such patent rights, copyrights, trademarks, process, lease, formula, or goodwill, or for promotion fees or expenses, or for other intangible assets, shall be delivered in escrow to the Commission under an Escrow Agreement that the owners of such security shall not be entitled to withdraw them from escrow until all of the stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than fifteen percent of the cash price for which the stock was issued, shown to the satisfaction of the Commission to have been actually earned on the investment in any common stock so held.

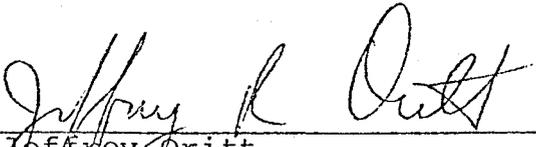
The purpose of this former section of the Act was to protect buyers of new issues from undercapitalization of the issuing company's stock, which could possibly result from the issuance of stock in return for non-cash assets. Those who

purchased stock for such intangible assets could be required to keep those securities in escrow with the Commission and could only receive possession of the stock, most probably for sale purposes, if other holders of securities who had paid cash for their securities received dividends to the extent of fifteen percent of the cash price for which the stock had been issued. The language indicates that the decision of the Utah Securities Commission to require escrow was discretionary ("may require . . .").

The Utah Uniform Securities Act was revised in 1963 and there is no provision in the present Act like §61-1-23. Since the old provision was repealed, the question is, what is the validity of an agreement executed under a repealed statutory provision?

Under §68-3-5, Utah Code Ann. (1953), repeal of a statute does not affect any right previously accrued or duty imposed by virtue of the repealed statute. Also under the present Act, §61-1-30, all conditions imposed under the previous statute remain as long as they would have under the prior law, and any suit or action based upon facts occurring prior to 1963 would be governed by prior law. However, this same section states that there is a two-year limitation on any actions previously accrued. Eighteen years have passed since 1963. Any Escrow Agreements entered into prior to the revision of the Utah Uniform Securities Act have long since had the statutory Statute of Limitations run on them.

Based upon these repealed and present provisions of the Utah Uniform Securities Act, and the statutory language of the repeal provision, I would conclude that the Utah Securities Commission will not be liable for releasing securities, held in escrow under the repealed provisions of the Utah Uniform Securities Act, to those individuals who initially put them in escrow. This informal opinion has not necessarily been reviewed in detail by the Attorney General and, therefore, does not constitute a formal opinion of the office.



Jeffrey Orritt
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for Utah Securities Comm.