

THE STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL
SALT LAKE CITY UTAH

SEPT.25 1945

PENSION S&
PROFIT SHARING
PLANS

Lawrence Taylor, Director
Securities Commission
Dept. of Business Regulation
B u i l d i n g

Dear Sir:

We are in receipt of the copy of your letter of Sept. 15 1945, notifying Prentice Hall Inc. that you are referring their inquiry to us for reply. Prentice Hall is making inquiry as to whether or not companies which are contemplating having pensions, profit-sharing or stock bonus plans of the type which qualify under Section 165A of the Internal Revenue Code must qualify under Blue Sky Law of Utah or whether they are exempt.

Section 165A of the Internal Revenue Code provides that stock bonuses, pensions or profit-sharing plans "of an employer for the exclusive benefit of his employees, or their beneficiaries, shall not be taxable under this supplement". The section further provides certain qualifications and limitations but the above is the general requirement of that section.

A security under Utah law is defined in Section 82-1-4, Utah Code Annotated 1943. It is, so far as might be applicable to this inquiry, defined as follows:

"Securities shall include any note, stock, trasury stock, bond debenture or evidence of indebtedness; certificate of interest or participation or certificate of interest in a profit-sharing agreement.....; investment-trust certifica shares or units, or a beneficial interest in.....profits or earnings;..... and any other instrument commonly known as a security....."

It is, of course, well known that other instruments which are "commonly known as securities include instruments which are evidences of indebtedness or instruments which are given to secure the fulfillments of contracts. Pension may refer to different types of contracts or instrumants. It may even include contracts of insurance. I am quite sure, however, that as used by Prentice-Hall in their inquiry, insurance type of pension was not included. Therefore, it could only be, and I assume it to be, an instrument which is an evidence of indebtedness. Therefore, pensions, bonus stocks and profit-sharing agreements, in my opinion, are all classified as securities under our law. The exempted securities, as listed under our law, are contained in Section 82-1-5, Utah Code Annotated 1943. The section is rather lengthy and I, therefore, refrain from quoting the same but I think it will suffice to say that under neither of the subsections of that section can either of the instruments referred to in this letter be considered as exempt nor can they in any way be considered as included in any of the exemptions in that section.

It is therefore, my opinion that these instruments referred to by Prentice-Hall, Inc., and which are included in Section 165A of the Internal Revenue Code, are securities under Utah Law and must be registered.

Very truly yours,

(signed) C. N. Ottosen, Asst. Att. General

Approved: