

UTAH SECURITIES COMMISSION

OFFICE OF THE ATTORNEY GENERAL, S.L.C.

APRIL 28, 1939

Honorable A. Ezra Gull
State Securities Commission,
B U I L D I N G.

Dear Mr. Gull:

You have requested my opinion as to whether or not the Securities Commission is authorized by law to record the registration by qualification of a security in the register of securities as of the date application is filed for such qualification in the office of the Commission. Particularly, in a case where sale of such security has been made without authority of the Commission in the interim between the date when application is made to the Commission for qualification and the date when the Commission has been satisfied that all prerequisites to qualification have been fulfilled. You advise that in the case to which you refer approximately six months elapsed between the date of application and the date when all requirements of the statute had been fulfilled.

I have carefully examined the provisions of our statutes relating to your question and while there are some matters with respect to which the Securities Commission may exercise considerable discretion I am of the opinion that the law does not authorize the Commission to record the registration of the security referred to in your question as of the date when application for qualification of said security was first filed with the Commission. The Commission does not have the power to condone the unauthorized sale of a security which under the law is required to be registered with the Securities Commission before any sale or offer of the same is attempted. In my opinion the statutory requirements prescribed for registration by qualification must be complied with before the Securities Commission has jurisdiction to enter a proper record of registration. They may not make that record of registration retroactive to take effect as of the date of filing of the application for registration by qualification. The pertinent language of the statute is clear and unequivocal. The statute reads:

"If upon examination of any application the commission shall find that the sale of security referred to therein would not be fraudulent or tend to work a fraud upon the purchaser, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall, upon the payment of the fee provided in this section, record the registration of such security in the register of securities, and thereupon such security so registered may be sold by the issuer, by any registered agent or any registered dealer who has notified the commission of his intention so to do in the manner provided in Section 82-1-16, subject, however, to the further order of the commission as hereinafter provided. Such registrations shall be valid for a period of one year from the date of entry in the register of securities, unless sooner canceled, suspended or revoked by the commission for good cause after notice to the issuer of the security."

Notwithstanding the applicant in question was in good faith in all its transactions involving sales of the security sought to be registered, and notwithstanding the Commission may be satisfied that no pecuniary injury will result by reason of such sales, I am still of the opinion that the foregoing statute unerringly points the way for the Commission and any departure therefrom would constitute an unauthorized act on behalf of the Commission.

Yours very truly,
JOSEPH CHEZ, ATTORNEY GENERAL

BY GROVER A. GILLES,
Deputy Attorney General.

UTAH SECURITIES COMMISSION

OFFICE OF THE ATTORNEY GENERAL, S.L.C.
APRIL 23, 1939

Honorable A. Ezra Gull
State Securities Commission,
B U I L D I N G.

Dear Mr. Gull:

You have requested my opinion as to whether or not the Securities Commission is authorized by law to record the registration by qualification of a security in the register of securities as of the date application is filed for such qualification in the office of the Commission. Particularly, in a case where sale of such security has been made without authority of the Commission in the interim between the date when application is made to the Commission for qualification and the date when the Commission has been satisfied that all prerequisites to qualification have been fulfilled. You advise that in the case to which you refer approximately six months elapsed between the date of application and the date when all requirements of the statute had been fulfilled.

I have carefully examined the provisions of our statutes relating to your question and while there are some matters with respect to which the Securities Commission may exercise considerable discretion I am of the opinion that the law does not authorize the Commission to record the registration of the security referred to in your question as of the date when application for qualification of said security was first filed with the Commission. The Commission does not have the power to condone the unauthorized sale of a security which under the law is required to be registered with the Securities Commission before any sale or offer of the same is attempted. In my opinion the statutory requirements prescribed for registration by qualification must be complied with before the Securities Commission has jurisdiction to enter a proper record of registration. They may not make that record of registration retroactive to take effect as of the date of filing of the application for registration by qualification. The pertinent language of the statute is clear and unequivocal. The statute reads:

"If upon examination of any application the commission shall find that the sale of security referred to therein would not be fraudulent or tend to work a fraud upon the purchaser, and that the enterprise or business of the issuer is not based upon unsound business principles, it shall, upon the payment of the fee provided in this section, record the registration of such security in the register of securities, and thereupon such security so registered may be sold by the issuer, by any registered agent or any registered dealer who has notified the commission of his intention so to do in the manner provided in Section 82-1-16, subject, however, to the further order of the commission as hereinafter provided. Such registrations shall be valid for a period of one year from the date of entry in the register of securities, unless sooner canceled, suspended or revoked by the commission for good cause after notice to the issuer of the security."

Notwithstanding the applicant in question was in good faith in all its transactions involving sales of the security sought to be registered, and notwithstanding the Commission may be satisfied that no pecuniary injury will result by reason of such sales, I am still of the opinion that the foregoing statute unerringly points the way for the Commission and any departure therefrom would constitute an unauthorized act on behalf of the Commission.

Yours very truly,
JOSEPH CHEZ, ATTORNEY GENERAL

BY ROBERT A. HUBB,
Deputy Attorney General.

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UTAH SECURITIES COMMISSION

OFFICE OF THE ATTORNEY GENERAL, S.L.C.

APRIL 28, 1939

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B U I L D I N G.

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I have carefully examined the provisions of our statutes relating to your question and while there are some matters with respect to which the Securities Commission may exercise considerable discretion I am of the opinion that the law does not authorize the Commission to record the registration of the security referred to in your question as of the date when application for qualification of said security was first filed with the Commission. The Commission does not have the power to condone the unauthorized sale of a security which under the law is required to be registered with the Securities Commission before any sale or offer of the same is attempted. In my opinion the statutory requirements prescribed for registration by qualification must be complied with before the Securities Commission has jurisdiction to enter a proper record of registration. They may not make that record of registration retroactive to take effect as of the date of filing of the application for registration by qualification. The pertinent language of the statute is clear and unequivocal. The statute reads:

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Notwithstanding the applicant in question was in good faith in all its transactions involving sales of the security sought to be registered, and notwithstanding the Commission may be satisfied that no pecuniary injury will result by reason of such sales, I am still of the opinion that the foregoing statute unerringly points the way for the Commission and any departure therefrom would constitute an unauthorized act on behalf of the Commission.

Yours very truly,
JOSEPH CHEZ, ATTORNEY GENERAL

BY GROVER A. GILLES,
Deputy Attorney General.