

OFFICE OF THE ATTORNEY GENERAL
STATE CAPITOL
SALT LAKE CITY 14, UTAH

June 23, 1958

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District Attorney
Fourth Judicial District
Provo, Utah

REQUESTED BY: Jackson B. Howard, District Attorney, Fourth
Judicial District.

OPINION BY: E. R. Callister, Attorney General;
Raymond W. Gee, Assistant Attorney General.

QUESTION: Is a membership in, or contract issued by, a
corporation or association wherein a discount
privilege to the purchase of merchandise is given,
a security within the scope of Section 61-1-4,
U.C.A. 1953?

CONCLUSION: Yes.

According to information furnished us, your question
arises upon the following facts:

X Corporation is engaged in the business of selling
freezers and memberships in a food plan, which plan consists in
part of a membership card or certificate entitling a purchaser
to buy food at certain stores or outlets at a specified discount.
This membership card or certificate is generally delivered in
connection with the purchase of a food freezer; however, it may
be purchased separately. In either event it is exchanged for
value, and is not a gift.

Section 61-1-4, U.C.A. 1953, defines a security as
including "* * * certificate of membership in, contract or agree-
ment given, made or issued by, any corporation, association, or
organization wherein a discount, reduction in price or other ad-
vantage, privilege or right in or to the purchase of merchandise
are held out or agreed to be given or made; * * *." It is our
opinion that the certificate or contract in question falls within
the aforementioned definition.

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Our research indicates two decisions in which similar contracts were held not to be securities within the definitions of particular state statutes. See *Lewis v. Creasey Corporation* (Ky.), 248 S.W. 1046; *Creasey Corporation v. Enz Bros. Co.* (Wisc.), 187 N.W. 666. However, in each of the foregoing cases, the statutes involved did not include the wording of the Utah law heretofore cited. For a further analysis of the Blue Sky Laws, see Annotation, *Blue Sky Laws*, 87 A.L.R. 42 at 74; Annotation, *What Constitutes Stock, Securities, or Investment Contracts*, 163 A.L.R. 1050 at 1103. We are of the conviction that the peculiar definition of "security" in the Utah statute embraces the instrument in question.

In reaching this conclusion we are aware that the Utah law sets forth a generous definition of the word "security" as distinguished from the more generally accepted definition of that term. 53 C.J.S., *Licenses*, Sec. 75, page 759 38 words and *Phrases, Securities*, page 468. We appreciate that an application of the Utah law has far-reaching effects on many business transactions not normally considered to involve securities, for "discount" houses and merchandise plans are very often based upon the use of membership cards and "discount" contracts between a corporation or association and a participating member. It would be impossible to advance a general rule in regards to all business activities of this nature for each case would have to be considered on its particular facts. The same approach would be necessary in ascertaining whether there is a "sale" of a "security" or whether the membership or right to purchase at a discount, or to receive other privileges is the result of a gift rather than an exchange or disposition for valuable consideration.

Limiting our conclusion to the specific question of whether the instrument involved in your case is a security, we answer the question in the affirmative.

Very truly yours,

E. R. CALLISTER
Attorney General

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