



State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

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January 4, 1995

Mr. David J. Ketelsleger
McAfee & Taft
Tenth Floor
Two Leadership Square
Oklahoma City, OK 73102

Re: Fleming Companies, Inc. File #000-0716-06/A40342-34

Dear Mr. Ketelsleger:

The Division of Securities ("Division") has reviewed your request for a no-action letter pursuant to § 61-1-25(5) of the Utah Uniform Securities Act, ("Act"), and Division Rule R164-25-5 on behalf of Fleming Companies, Inc., on November 4, 1994. So as to avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photo copy of your letter.

Based upon your factual representations, the Division will not recommend any enforcement action under § 61-1-3 of the Act, if the Fleming's Dividend Reinvestment and Stock Purchase Plan, (the "Plan"), is effected as described in your letter.

Because this no-action letter is based upon the representations made to the Division, it should be noted that any different facts or conditions of a material nature might require a different conclusion. Please note that this no-action letter relates only to the referenced Plan and shall have no value for future similar factual circumstances.

Very truly yours,

DIVISION OF SECURITIES
UTAH DEPARTMENT OF COMMERCE

J. Matthew Jenkins
Director of Licensing



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WRITER'S DIRECT DIAL

David J. Ketelsleger

(405) 552-2236

November 4, 1994

VIA FACSIMILE

Mr. Mark E. Thomas
Director of Licensing
Department of Commerce,
Division of Securities
P.O. Box 45808
Salt Lake City, Utah 84145-0808

Re: No Action Letter - Exemption from
Utah Securities Registration and
Agent Licensing Requirements for
Common Stock Sold by an Issuer to
its Shareholders

Dear Mr. Thomas:

On October 28, 1994, Fleming Companies, Inc. (the "Company") filed a Registration Statement on Form S-3 (No. 33-56241) pursuant to the Securities Act of 1933, thereby registering 600,000 shares of Fleming's common stock, par value \$2.50 (the "Offered Stock"), to be issued to the holders of its common stock (the "Shareholders") pursuant to Fleming's Dividend Reinvestment and Stock Purchase Plan (the "Plan"). After receiving proper authorization, the Company pays to Liberty Bank and Trust Company of Oklahoma City, Oklahoma, N.A. (the "Administrator") any cash dividends on shares of common stock registered in a participant's name and on shares of common stock credited to his account under the Plan. The administrator then uses the cash dividends, together with any optional cash payments made by the participant (limited to \$5,000 per calendar quarter), to purchase shares of the Offered Stock.

Shareholders receive a 5% discount from market value on Offered Stock purchased through reinvested dividends. Offered Stock purchased through optional cash payments are purchased at market value. Following each dividend payment and reinvestment transaction, the Administrator mails to each participant a statement of his account. Each participant continues to receive

the Company's annual and quarterly reports to Shareholders, notices of annual meetings and proxy statements.

Discussion. The Utah legislature has determined that, in certain specified transactions between an issuer and its shareholders, registration of securities and filing of sales literature is not required for the protection of the shareholders. As a result, those transactions are exempt from Sections 61-1-7 and 61-1-15.¹ See Section 61-1-14(2)(j). Issuance of the Offered Stock pursuant to the Plan is akin to the exempt transactions set forth in Section 61-1-14(2)(j) and should similarly be characterized as an exempt transaction under Section 61-1-14(2). Any offer or sale of Offered Stock pursuant to the Plan is by an issuer to existing security holders where no commission or other remuneration is paid for soliciting the security holders. Arguably, a Shareholder's purchase of the Offered Stock pursuant to the Plan constitutes the exercise of a nontransferable right, one of the specified transactions under Section 61-1-14(j)(2).

An equally compelling reason for exempting the Company from registration and filing requirements is that compliance with Sections 61-1-7 and 61-1-15 is not necessary to protect the Shareholders. The Company is the largest food wholesaler in the United States and presently has over 37 million shares of its common stock issued and outstanding. The Offered Stock is registered under both the Securities Act of 1933 and the Securities Exchange Act of 1934. The Offered Stock will be listed on the New York Stock Exchange, the Pacific Stock Exchange and the Chicago Stock Exchange. Finally, prior to purchasing the Offered Stock under the Plan, the Shareholders will receive (i) a prospectus fully informing them of the provisions of the Plan, (ii) the Company's annual report on 10-K for the year ended December 25, 1993 and (iii) the Company's quarterly reports on Form 10-Q for the first and second quarters of 1994.

As evidenced above, the Company has taken every effort to ensure that the Shareholders have and will receive sufficient information to make an informed investment decision. For this reason, we believe the offer and sale of the Offered Stock pursuant to the Plan should be treated as an exempt transaction akin to those set forth in Section 61-1-14(b)(j). As an exempt transaction, the Administrator and any officer or employee of the Company should be exempt from filing as an agent pursuant to the definition of agent in Section 61-1-13(2).

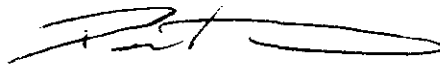
Requested No Action and Exempted Positions. For the reasons set forth herein, we ask the Division of Securities of the Utah Department of Commerce to (i) characterize the offer and sale

¹Unless otherwise indicated, any reference to "Section" shall be to sections of the Utah Uniform Securities Act.

of the Offered Stock pursuant to the Plan as an exempt transaction under Section 61-1-14(2), (ii) exempt the offer and sale of the Offered Stock pursuant to the Plan from Sections 61-1-7 and 61-1-15, (iii) exempt the Administrator, or any officer or employee of the Company, from the definition of agent under Section 61-1-13(2), and (iv) render a no-action letter advising the Company that, under the facts described herein, the Division will not recommend that the Director take any action against the Company, the Administrator or any officer or employee of the Company if the transaction is carried out as described.

To the best of my knowledge, there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth herein. The offer and sale of the Offered Stock pursuant to the Plan has not been commenced. If you have any questions or require additional information, please contact the undersigned at the number shown above or (405) 235-9621.

Sincerely,



David J. Ketelsleger

DJK:lt