

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

C
O
P
Y

December 16, 1946

Mr. Lawrence Taylor, Director
Securities Commission
Department of Business Regulation
S U T I D I U S

Dear Mr. Taylor:

You have requested the opinion of this office as to whether or not the Hotel Committee of the Chamber of Commerce of Provo, Utah must register with the Securities Commission before soliciting persons to enter into a proposed pre-organization subscription agreement for a corporation to be formed in the future, which corporation proposes to erect a hotel in Provo, Utah.

A copy of the proposed agreement, which was submitted with your request for an opinion, indicates that those entering into the agreement subscribe for a specified number of shares of stock at an agreed price. When a sufficient number of these subscriptions is obtained it is proposed to incorporate the company, all of those who have purchased subscription agreements to become incorporators. It appears quite clearly that the general public is being solicited to enter into these agreements, and therefore, there is a public offering of the pre-incorporation certificates in the company to be formed. The decision of the question must, therefore, turn upon whether or not the interest gained in the company by those entering into these agreements may be regarded as a security.

Section 82-1-4, Utah Code Annotated, 1943, provides in part as follows:

"When used in this chapter the following terms shall, unless the context otherwise indicates, have the following respective meanings:

(1) 'Security' shall include ~~any~~; collateral trust certificates, preorganization certificates, or preorganization subscriptions;"

(2) 'Sale' shall include every disposition, or attempt to dispose, of a security or interest in a security for value."

The fact that all those entering into the agreement are to appear as incorporators of the corporation does not alter the situation. It being established that the interest being purchased in the proposed corporation by those who enter into these agreements is in the nature of a security, registration is automatically required unless either the security or the sale is exempted under the provisions of Section 82-1-3 or Section 82-1-6, Utah Code Annotated, 1943.

I have examined these two sections and do not believe that either the security or the sale falls within these exemptions. It is, therefore, my opinion that the persons offering these pre-incorporation certificates for sale must register the same with the Securities Commission.

Yours very truly,

/s/ Grover A. Giles

GROVER A. GILES
Attorney General

GAG:kl