

OFFICE OF THE ATTORNEY GENERAL

STATE CAPITOL

SALT LAKE CITY 1, UTAH

May 6, 1943

#706.

Mr. Lawrence Taylor, Director
Utah State Securities Commission
B U I L D I N G

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Dear Sir:

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I acknowledge receipt of your letter of May 4, 1943. You called my attention to an attached Application through which a certain group intended to obtain tentative subscriptions for debenture notes that might be issued at a later date by a corporation that may be organized to construct a contemplated medical building at 506 East South Temple, Salt Lake City, Utah. You desire to know whether or not the taking of these applications for tentative subscriptions would require registration under our Securities Act.

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Y
A copy of the proposed application, as indicated above, was attached to your letter of reference. This copy indicates that the plan is to contact certain medical men and possibly others to get commitments as to the reservation of space in the new building. This agreement also provides for a subscription to these debenture notes to be issued in the future on the part of the other contracting party. The Application provides that this Second Party be committed to a definite sum on his subscription for a debenture note.

It appears quite clearly that the general public or at least a specific segment thereof, namely, doctors and other medical men are to be solicited to enter into these agreements.

In my opinion this is a public offering of preincorporation certificates in a company to be formed. Our State law provides that such agreements are securities. 32-1-4 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 includecollateral trust certificate, preorganization certificate, or preorganization subscription;....

(2) 'Sale' shall include every disposition, or attempt to dispose, of a security or interest in a security for value.... 'Sale' shall also include an exchange, and attempt to sell, an option to purchase, a solicitation of purchase, a subscription or an offer to sell, directly or by an agent..."

I have examined the provisions of Section 32-1-8, 6 Utah Code Annotated 1943 and in my opinion, the agreement in question is not exempt under our Statutes. It is further my opinion that the individuals offering these preincorporation certificates to the public should register with the Securities Commission.

Very truly yours,

(signed) EDWIN H. GILLES