

Investment Commissioner, Powers of, Company Selling Oil Land—License Not to Issue to Investment Company Evading Law.

Where an oil promotion company sells deeds to tracts of land, instead of stocks, it is subject to the Blue Sky Law.

July 15, 1920.

Hon. Geo. P. Porter,
Investment Commissioner,
Capitol.

Dear Sir:

This is in answer to your inquiry as to whether or not the Pack Investment Company is affected in its operations within the State of Montana by Chapter 85, Laws of 1913, commonly known as the Blue Sky Law.

This company, as I understand it, has oil lands in the State of Montana. It subdivides the main tract into smaller tracts which it sells to such persons as it can induce to buy, and conveys title by warranty deed. The company agrees to drill two wells upon the tract and each person buying a subdivided lot has an equal share in all oil produced from the two wells so drilled. The company desires to appoint agents in the State of Montana and has asked whether or not it is controlled by the above indicated act.

So far as acts of the character of the Montana Blue Sky Law have been before the courts, they have been construed as acts designed to protect the investing public. Looking at the proposition which the Pack Investment Company has proposed, it is very apparent that it is a scheme whereby it collects money as an investment which said money

is to be used in the drilling of oil wells. Instead of selling stock certificates in an oil company it sells deeds to land. In sum and substance it is nothing but an oil promotion scheme. The method adopted by the company is merely a thin veil to cover its contracts and avoid the operation of the law.

Notwithstanding the fact that the Pack Investment Company has merely adopted a ruse to avoid the operation of the Blue Sky Law, and notwithstanding the fact that the legislature meant to protect the investing public in such a scheme as the one here under consideration, I have grave doubts as to whether the proposition can be reached by our law. A reading of our law will show its defects in that it has been poorly drawn and is uncertain in its provisions, and further, to some extent, contradictory. For instance, it is not shown beyond dispute as to whether or not a company selling its own stock is subject to the operation of this law. This office has held, however, that unless two-thirds of the property of such company is located in the State of Montana, it becomes subject to the provisions of the act. The act further limits its scope of operation to negotiations in "any stock, bonds or other securities of any kind of character issued by any other corporation."

In Subdivision 2 of Section 3, the act includes any corporation, person, etc., negotiating in the sale of "any contract for deed, bonds for deed, or other papers by whatsoever uses, etc., not originally issued by such corporations" to land located outside of the county in which the negotiation is carried on.

In the case under consideration we have a situation where the company sells its own land and is not dealing in contracts for deed or bonds for deed *not originally issued by such corporation*. The difficulty which presents itself in such a case is that our law provides a criminal penalty for any one violating the law. When a case of this kind is presented before a court in the form of a criminal prosecution, the court upon well recognized principles does not extend the operation of a law so that a doubtful case might be included.

Under all the circumstances presented, and in view of the fact that the act was originally designed to protect the investing public, particularly as to investments made outside of the State, I am of the opinion that your Department should undertake to bring the Pack Investment Company within the operation of this law and refuse to permit it to do business unless it is able to procure a license from your Department. I am not satisfied that the Supreme Court of our State would sustain your Department in such an undertaking, but until the contrary is established by its opinion I believe it to be your duty to assume the authority indicated. I also believe that the law under consideration should be amended so that there will be no doubt upon a proposition such as is here presented. The amendment is also necessary in clearing up the confusion which now exists by the provisions of the law itself.

Respectfully,

S. C. FORD,

Attorney General.