

June 10, 1943.

Mr. John J. Holmes
 State Auditor and Ex Officio
 Commissioner of Insurance
 State Capitol
 Helena, Montana

Dear Mr. Holmes:

You have requested my opinion on the following facts:

"A firm of New York lawyers has requested of this department a ruling as to whether an insurance company incorporated under the laws of the State of Connecticut and qualified to do business in the State of Montana, proposing to increase its capital stock by the issue of warrants for the purchase of such increased capital stock to its stockholders in proportion to their respective stock holdings, would have to secure a license from the Investments Department, as required by Section 4032, and whether such an act on the part of the company would constitute an offer for sale, as contemplated in Section 4032.

"Their letter further states that the issue of warrants to existing stockholders is required under the law of the state of incorporation, establishing preempted rights of stockholders. The company intends to mail the warrants from the company's Home Office in Connecticut to its stockholders residing in the several states, including the State of Montana."

Section 4032, Revised Codes of Montana, 1935, provides:

"It shall be unlawful for any investment company or stock-broker, or any representative thereof, to sell, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatsoever, of any stocks, bonds, or other securities of any kind or character, other than those exempted from the provisions hereof by the definitions herein provided, without a permit from the state investment commissioner as hereinafter provided."

This section is a part of Chapter 316, Political Code, 1935, entitled "Regulation of Stock Brokers and Investment Companies," and referred to as the "Blue Sky Law."

Section 4026 of the Chapter defines the term "Investment Company," Section 4027 defines "Securities," and Section 4028 classifies ten kinds of securi-

Opinion No. 65.

Blue Sky Laws—Corporations— Permit, sale of stock without, when.

Held: No permit to sell securities in this state is required where the security is an increase of capital shares of a foreign corporation qualified to do business in Montana, offered to present stockholders only under their preempted right under the laws of the state of incorporation.

ties to which the provisions of the chapter are not applicable.

It will be noted Section 4032, *supra*, prohibits any investment company or stockbroker, as those terms are defined by Sections 4026 and 4027, or any representative thereof, from selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever, of any stocks, bonds, or other securities of any kind or character, other than those exempted under Section 4028, without a permit. The language of this section is clear and unequivocal. Unless, therefore, the insurance company in question does not come within the definition of "Investment Company" under Section 4026, or "Stock Broker" under Section 4027, or unless the securities it proposes to sell are of a class as exempted under Section 4028, it must procure a permit before selling its stock in this state.

There can be no doubt the insurance company here in question comes within the definition of "Investment Company" under Section 4026.

The share of increased capital stock proposed to be sold do not come within any of the classes of securities exempted under Section 4028, *supra*. It would appear therefore, on these facts alone, the company would be required to secure a permit. However, another question is here involved. Do the acts of the company in issuing warrants for the purchase of such increased capital stock to its stockholders in proportion to their respective stock holdings, as required by the laws of the state of its incorporation, and mailing such warrants to stockholders in Montana constitute a sale, offer of sale, subscription or negotiation for sale as contemplated by Section 4032, so as to constitute a violation thereof?

Blue Sky laws are designed to protect the public from fraud. To accomplish this purpose the legislature has by Chapter 316 prohibited the sale of stocks, bonds and other securities within the state unless the person, company or corporation secures a permit. Under the provisions of this chapter, before a permit may be granted, the one offering the security for sale must disclose certain information to the Investment Commission, from which he may determine if that person or corporation is solvent, and if the plan of business, contract, stock or security is fair, just, equitable and not oppres-

sive to any class of contributor. In other words, the commissioner must determine the public may safely invest its money and be protected in such investment. (See Section 4036, Revised Codes of Montana, 1935.)

Under the facts here presented, it is not proposed to offer the security to the general public, but only to those who are present stockholders or investors in the corporation. The corporation has qualified itself to do business in Montana. The Investment Commission has all the information covering the corporation which is required by Section 4036, *supra*. Furthermore, under the facts it is doubtful if it can be said the corporation is offering the security for sale. The law of Connecticut, the state of its incorporation, gives present stockholders a preempted right to purchase the increased capital stock, and requires the corporation to advise such stockholders of the increase and give them an opportunity to exercise their preemption, by mailing them warrants for such purchase. As was said by the Supreme Court of Ohio, "The company was not offering said stock to its stockholders; the law itself was doing this." (Bates, *Trustee v. Firestone*, 19 Ohio App. Rep. 243, 253.)

The Supreme Court of Montana has not passed upon this question. However, from a review of cases from other states having Blue Sky laws, I am convinced our legislature did not intend transactions such as here proposed should be subjected to the requirements of our Blue Sky law. See the following cases: *Bates, Trustee v. Firestone*, 19 Ohio App. Rep. 243; *Mertz et al. v. Hudson Mfg. Co.*, 194 Minn. 636, 261 N. W. 472; *Doherty v. Bartlett*, 81 Fed. (2d) 920.

It is therefore my opinion, where a foreign corporation qualified to do business in this state issues warrants to its present stockholders in Montana to be used by such stockholders to exercise their preempted right to purchase an issue of increased capital stock of the corporation as required by the laws of the state of its incorporation, such transaction does not come within the purpose or intent of the Blue Sky laws of Montana, Chapter 316 Political Code), and such corporation is not required to secure a permit.

Sincerely yours,
R. V. BOTTOMLY
Attorney General