#4 512-Clark

Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
JUSTICE TOM C. CLARK

June 1, 1953

Dear Chief:

Re: S. E. C. v. Ralston-Purina, No. 512

I have not treated with two matters you raised in this case because the first one has no bearing on the legal problem and the second was not raised by the parties and is not relevant to the stock issue here:

1. Cost of Registration. According to Loss, Security Regulation, pp. 244-246, the cost of issues without underwriters, which are unnecessary here, would be .69%. That would be less than $2500 on the initial offering and, of course, much less on subsequent ones where house counsel could handle. This is certainly a very small amount for such a concern as Ralston. Congress has been pressed for several years to raise the exemptions of 3(b) and since in 1945 it did raise it to $300,000 (only slightly less than the highest sales here) I believe there has been a careful balancing of costs against necessity for disclosure.

2. Standards. In Chenery the problem involved a public utility concerning which the Act provides for administrative determination. Here there is no such provision and the Commission has taken the position it can only give informal opinions, never a flat finding that an issue is "public" or that it is "private". For this reason it operates somewhat like the antitrust division in the merger field, i. e., it gives informal opinions. Since the Commission has no authority for entering an official order under the exemption provision of the Act of course it has never promulgated any standards. Ralston has not raised this as an issue in the case.

T. C. C.

The Honorable
The Chief Justice