

APR 14 1937

Honorable Charles H. Carey,
Corporation Commissioner,
Corporation Department,
Salem, Oregon.

Dear Mr. Carey:

On March 10, 1937, I wrote you to acknowledge the letter forwarded to us by Mr. Day Karr, Regional Administrator, Securities and Exchange Commission, Seattle, Washington, and to state that we should like to give more consideration to the questions raised by you than had at that time been possible. Since then additional information has come to us which makes the answers to your questions somewhat clearer.

In your letter you ask our opinion as to whether the exemption in Washington law for securities of corporations organized under the laws of Washington for the purpose of engaging either in the metalliferous or hydrocarbon mining industries as a principal business tends to promote or retard the actual and legitimate mining industries of the State of Washington. You also ask for our opinion as to the effect of such an exemption on the investor and the public generally. The most significant information which I can give you at the present time is the fact that the State of Washington has very recently passed a Mining Act, Chapter 178, (S.S.B. 73) entitled "An Act providing for the regulation and supervision of the issuance and sale of original issues of metalliferous mining securities, requiring the filing of statutory statements for the protection of the public, requiring licenses of underwriters, agents and salesmen, defining powers and duties of the Director of Licenses and prescribing penalties, and declaring an emergency."

I enclose a copy of this Act for your perusal since its terms illustrate the nature of the problem which the Better Business Bureau and the Director of Licenses who supported this legislation were attempting to meet. The exemption destroyed by this recent piece of legislation had several rather unfortunate effects upon legitimate mining industry, investors and the public. Our information leads us to believe that the exemption has had a tendency to give mining stocks in the State of Washington generally an unseamy reputation with intelligent investors and has thus made the obtaining of capital by legitimate mining enterprises a

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more difficult one. Indirectly, this reacts upon the public as a whole since it prevents the existence of desirable enterprise and presumably lessens the volume of wages and profits which would otherwise flow into the hands of laborers and investors within the State. Furthermore, it would appear that legitimate mining industries are also impeded by the very fact that the exemption permitted funds seeking investment to be used in the purchase of securities not backed by real asset value. Every dollar which goes to the purchase of this latter type of security is a dollar which might very probably have been spent for a sound mining security. In this respect, also, the exemption has proved to be a positive hindrance to the more desirable type of mining enterprise.

As evidence of the fact that funds do actually flow into fraudulent promotion schemes where the securities of such schemes are allowed to be marketed, it may interest you to know that a very large proportion of the cases brought to the attention of our Seattle Regional Office in the past have involved fraudulent sales of mining securities in Washington or Idaho which were exempt from the usual provisions of the Blue Sky Laws of those States. Cases arising in the State of Oregon have presented relatively little trouble. While the existence of State regulatory laws does not prevent violations within the purview of the Securities Act of 1933 and the Securities Exchange Act of 1934, nevertheless, it would appear that violations of the Federal Acts are apt to go hand in hand with inadequate State regulation.

In another group of cases we have found that though there was fair evidence of fraud the perpetrators could not be punished because the State Acts gave an exemption and the requisite jurisdictional factors for the application of the Federal Acts were not present. In this group of cases the removal of the exemption would have brought such fraud within the reach of at least one law enforcement authority.

It is desirable, of course, that requirements in connection with the financing of mining operations, particularly such operations as involve the initial development and exploitation of new mines and fields should not be so heavy as to unduly restrict investment, but it would seem entirely possible to require a reasonable disclosure whereby the investor could obtain some inkling of the character of the enterprise into which he was putting his money, such as is necessary in the case of mining securities registered with the Securities and Exchange Commission on Form A-0-1, a copy of which I am enclosing. This is still true, though it be granted that all such exploitation and development work is speculative in character.

NS - C.R.C.

I hope the above will answer your questions and trust you will feel free to write me further on this matter.

Very truly yours,

For Allen E. Strong,
General Counsel:

Robert E. Elmer, Jr.
Assistant to the General Counsel.

Enc.

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