

6-1-1952

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Recommended Citation

Walter H. Robinton and Hugh L. Sowards, *Florida's Blue Sky Law: The Lawyer's Approach*, 6 U. Miami L. Rev. 525 (1952)

Available at: <https://repository.law.miami.edu/umlr/vol6/iss4/2>

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FLORIDA'S BLUE SKY LAW: THE LAWYER'S APPROACH

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and

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The relatively recent but rapidly increasing growth of industry in Florida has focused the attention of lawyers and businessmen alike on the law governing the sale of securities in this state.¹ Known as the "Blue Sky" law, it has been on the statute books in varied forms since 1913.

It is perhaps an understatement to say that this law is both currently significant and currently unknown to the legal profession as a whole. Significant it is because of the aforementioned influx of new businesses. The plain fact of the matter is that new businesses need funds, and frequently these funds must be raised by selling a piece of the business to outsiders. This in turn may mean a public sale of securities and the consequent necessity of complying with state securities laws. The law is unknown to attorneys in the sense that it is not an exaggeration to state that a sizeable portion of the legal profession is not even aware of its existence. This anomalous situation is due in part to the fact that the Blue Sky law is not a physical part of, or next to, general corporate legislation on the statute books. This fact, of course, in no way excuses the attorney from completing his proper research, but illustrations of improper research in this respect are legion.² More specifically, it is normally a service on the part of the attorney who organizes a corporation to present his client with a minute book containing a copy of the corporate charter, minutes of the first meeting, by-laws, and the like. In addition, a book containing blank shares of stock is presented. The new enterprise may need funds almost immediately, and

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The authors want to make it clear that in no sense are the views expressed in this article those of the Florida Securities Commission. The main objectives of this article are to present an overall picture of securities law in Florida, both from a legal and administrative standpoint, with special emphasis on how the attorney fits into this picture, what some of his problems are, and how he may be assisted in approaching and solving those problems in a practical manner.

1. FLA. STAT. c. 517 (1951). From this point on the Act will be referred to merely by indicating the appropriate section number.

2. Several state securities commissions, including that of Florida, have attempted to ameliorate this situation by sending a letter to the attorney who forms a corporation upon the granting of the corporate charter by the secretary of state. This letter puts him on notice of Blue Sky legislation.

the attorney may be asked whether it is permissible for the corporation to sell shares of its stock. The attorney has read the appropriate section of the corporation statute: "Every corporation may issue the shares of stock described in its certificate of incorporation. . . ."³ Receiving an affirmative reply from the attorney on the basis of this statutory provision, the corporate officers or their agents proceed to sell shares publicly. Result: the officers are faced with possible civil and criminal penalties under the state securities act; the attorney faces loss of business as well as loss of professional prestige. It should be emphasized that the preceding discussion is far from being academic. On the contrary, such failure to know of the existence of the Blue Sky law has posed a major problem for the Florida Securities Commission.

It is no less apparent that that segment of the legal profession which does know of the existence of Blue Sky legislation is generally unfamiliar with the statute. There is only the vaguest idea of the reason for this statute, when, and to whom, it applies, and what it covers. A word seems in order here on the background of this Act.

Around the turn of the present century it became apparent that common law procedures and remedies furnished inadequate investor protection with regard to the issuance and trading of securities.⁴ Accordingly, the state legislatures began to enact what are commonly termed "Blue Sky" laws, for the avowed purpose of halting "speculative schemes which have no more basis than so many feet of 'blue sky'."⁵ Florida was among the first of the states to adopt such legislation.⁶ It was not until 1933 that federal securities legislation was enacted, but by that time every state but Nevada, which still has no securities law, had entered the field. These state laws differ widely in their approach to securities regulation, but all have a common objective—to prevent the sale of "unsound" or worthless securities to the public, fraudulent promotions, dishonest schemes and other evils attending unregulated public sale of securities. Frequent attempts have been made in the direction of uniform state securities regulation, but they have been far from successful. Over twenty years ago the National Conference of Commissioners on Uniform Laws and the American Bar Association approved a Uniform Sale of

3. FLA. STAT. § 612.09 (1951).

4. This is reflected in the writings of the time. See, e.g., BRANDEIS, *OTHER PEOPLE'S MONEY* (1914); Ayres, *Governmental Regulation of Securities Issues*, 28 *POL. SCI. Q.* 586 (1913).

5. *Hall v. Geiger-Jones*, 242 U.S. 539, 550 (1917); see also *State v. Atlantic Title Co.*, 118 Fla. 402, 158 So. 888 (1937).

6. In 1913, the original Florida Securities Act was enacted. Fla. Laws 1913, c. 6422. The Act was entitled, "An act to define domestic and foreign investment companies; to provide for the regulation and supervision of same; to provide conditions and terms under which corporations, foreign and domestic, can sell to persons in Florida stock and other securities." The body created for administration of that Act was called the "Investment Company Board." Two years later the Act was amended. Fla. Laws 1915, c. 6862. In 1931 the Uniform Sale of Securities Act, with modifications, was adopted. Fla. Laws 1931, c. 14899.

Securities Act. Florida was one of the few states adopting a modified version of the Act.⁷

I

SCOPE OF THE ACT — FLORIDA SECURITIES COMMISSION

The Act provides for the creation and maintenance of a state securities commission, consisting of three constitutional state officials—the comptroller, the treasurer and the attorney general;⁸ the Commission presently consists of the Hon. J. Edwin Larson, State Treasurer, the Hon. Clarence M. Gay, Comptroller, and the Hon. Richard W. Ervin, Attorney General. Mr. Larson is currently serving as chairman of the Commission. An annual report on the work of the Commission must be made to the governor.

II

DEFINITIONS

One of the first duties of an attorney when confronted with a situation wherein his client desires to raise funds through the sale of pieces of paper is to ascertain whether those pieces of paper are statutory “securities.” Obviously there is no difficulty in this regard if the pieces of paper fall within the normal security categories—common or preferred stock or bonds. But the definitions section of the Act is specific in including other pieces of paper within the definition of “security” that one might not construe as securities in the everyday usage of that term: “. . . any note . . . certificate of interest or participation, whiskey warehouse receipt . . . certificate of interest in an oil, gas, petroleum, mineral or mining title or lease . . . collateral trust certificate, preorganization certificate . . . investment contract, or beneficial interest or title to property, profits or earnings; interests in or under a profit-sharing or participation agreement or scheme. . . .”¹⁰

The language of this section, and its interpretation, presents interesting and practical problems in statutory construction. Suppose that money is raised through the sale of pieces of paper *not* enumerated in this section. Could such pieces of paper nevertheless be labeled “securities” within the section? In *Mutual Bankers Co. v. Terrell*,¹¹ the Supreme Court of Florida held that bonded warehouse certificates were not securities, and thus the sale of whiskey warehouse receipts was not in violation of the Act. The Act was subsequently amended to include a “whiskey warehouse receipt, or other commodity warehouse receipt, or right to subscribe to any of the foregoing.” It has since been made abundantly clear, however, that this deci-

7. Alabama, Hawaii, Louisiana, Michigan, Oregon and South Carolina also have adopted modified versions of the Uniform Sale of Securities Act. It was stricken from the list of approved acts in 1944. NAT. CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS, HANDBOOK AND PROCEEDINGS 81 (1944).

8. Sections 517.03 and 517.04 provide for employment of additional help.

9. Section 517.04.

10. Section 517.02(1).

11. 130 Fla. 583, 178 So. 399 (1938). But see *Boyer v. Black*, 154 Fla. 723, 18 So.2d 886 (1944).

sion did not mean automatic judicial or administrative exclusion from the statutory definition of "security" of all pieces of paper not enumerated in this section. Suppose, for example, that a Florida crop producer offers to enter into agreements with the general public; wherein he, in consideration of money advanced to him by members of the public, agrees to prepare his land for the growing of broccoli, tomatoes, or other crops; that he agrees further to harvest and market these crops and, after paying all expenses and costs in connection with the operations, agrees to repay the money advanced and to share the profits from the venture with the persons putting up the money. Such propositions frequently appear in the financial section of newspapers as advertisements, a copy of the proposed agreement being sent to the reader upon request. Would such an agreement constitute a "security" within the definition of the Act? While it is true that the term "crop financing agreement" or one of similar import does not appear in the definitions section of the Act, the Commission nevertheless takes the position that such agreements are "securities."¹² There is good foundation for such a position. The language of the section itself includes "certificates of interest or participation" and "certificates of interest in a profit-sharing agreement." The words "profit-sharing" are key words in this respect. Although this particular type of agreement lacks the outward earmarks of a security and is not specifically enumerated in the Act, it would certainly seem that it is a "certificate of interest in a profit-sharing agreement." The point is that the substance of the transaction, not its form, should control. The same problem could arise with respect to cattle raising, to tung groves, or to any other schemes wherein the fund raiser agrees to share the profits with the investing public and commingles their invested funds. While these cases have never been squarely presented to the Florida Supreme Court, it is probable that that court would construe the statute liberally and in doing so would lean heavily on the words "profit-sharing."¹³ The federal courts and several of the other state courts have liberally construed similar statutory language, holding that contracts and deeds to burial lots,¹⁴ citrus groves,¹⁵ a university of plenocracy,¹⁶ and cultivated oyster farms¹⁷ were securities even though not specifically enumerated in the statute.

Of course, it should be stressed that not all agreements for the sale of cattle, crops and the like are securities within the language of the statute.

12. OP. ATT'Y GEN. 050-72 (Feb. 8, 1950). All attorneys general opinions cited herein are those of the Attorney General of Florida.

13. In *McElfish v. State*, 151 Fla. 140, 144, 9 So.2d 277, 278 (1942), the court said, "of necessity no definition of a security can be given to fit all cases. The thing sold will in each case be examined to determine if it falls within the purview of this chapter."

14. *State v. Lorentz*, 221 Minn. 336, 22 N.W.2d 313 (1946).

15. *SEC v. W. J. Howey Company*, 328 U.S. 293 (1946) (this case originated in Lake County, Florida).

16. *SEC v. Wickham*, 12 F. Supp. 245 (D.C., Minn. 1935).

17. *SEC v. Cultivated Oyster Farms* (S.D. Fla. 1939, unreported). See also Note, 163 A.L.R. 1050 (1946); cf. *State v. Hemphill*, 142 Fla. 728, 195 So. 915 (1940).

The deciding factor would seem to be an agreement to share profits with the general investing public and the commingling of funds.¹⁸ In the last analysis, the importance of this phase of the Act to the attorney is to recognize that a problem exists. Each situation must be considered on its own facts, for even a minor difference in the contractual arrangements may be the determining factor as to whether or not the agreement is a statutory security. When the attorney is asked for advice on one of these borderline situations, it would be wise to submit a copy of the proposed agreement and request a clarifying opinion from the Commission.

In addition to the term "security," this section of the Act defines such terms as "person," "sale," "dealer," "issuer," "broker," "agent," and "mortgage." These subsections should be read closely when a problem under the Act is presented, for they are frequently used in the language of subsequent sections. In this connection, special note should be taken of the word "person." A somewhat common misconception is that the Act is concerned only with *corporate* securities. But in reality the Act is applicable to securities issued by any "person;" and that term is defined to include "... a natural person, a corporation ... a partnership,¹⁹ an association, a joint stock company, a trust and any unincorporated organization."²⁰ This subsection assumes added significance when read in conjunction with the subsection defining "issuer" as "every person who proposed to issue ... any security."²¹

Similar close attention should be directed to the broad statutory definition of "sale."²² Suppose, for example, that common stock in the ABC corporation is sold to X, and that X receives one share of preferred as a bonus for every share of common that he purchases. Is the bonus stock *sold* so as to be within the purview of the Act? This subsection provides that "any security given or delivered with, or as a bonus or account of any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value." Similarly, "sale" includes "every disposition, or attempt to dispose, of a security ... an attempt to sell, an option of sale, a solicitation of a sale, a subscription or an offer to sell directly or by an agent, or a circular letter, advertisement or otherwise."²³

18. A transaction involving a partnership profit-sharing arrangement was held to constitute a sale of an interest in a profit-sharing agreement or scheme and a "security" within this section. *Ryan v. State*, 128 Fla. 1, 174 So. 438 (1937).

19. *Ibid.*

20. Section 517.02(2). It should be noted that "trust" as used in this section does not include a testamentary or public charitable trust.

21. Section 517.02(5). This subsection also states that any person who acts as a promoter shall be deemed an "issuer."

22. Section 517.02(3).

23. Conversion privileges and rights are not "sales" under this subsection, subject to the limitations of § 517.06(9).

III

WHO AND WHAT IS SUBJECT TO THE ACT

(a) *Exempt Securities*

Assuming that his client proposes to sell a security, the attorney should then examine the Act to ascertain whether that type of security is exempt from the provisions of the Act. If this is the case, then it is not necessary that the security in question be registered. The Act is specific in this respect, providing for ten different main classes of exempt securities.²⁴ Included in this list are any securities guaranteed by the United States, its territories or possessions, or by any state of the United States or political subdivision or agency thereof; guaranteed by a foreign government maintaining diplomatic relations with the United States; issued by a national bank, federal land bank, joint-stock land bank or national farm loan association, or by any United States governmental corporation;²⁵ issued or guaranteed by a railroad or other public service utility as long as such railroad or public utility is under either rate issuance or supervision by federal, state or municipal authorities;²⁶ secured by equipment trust obligations; of holding corporations if secured by "collateral consisting of any securities" above described;²⁷ issued by a corporation "organized exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes;" listed on stock exchanges of cities with a population in excess of one million; issued by Florida state banks, trust or savings and loan institutions; or that are short term commercial paper; and all preferred shares and bonds outstanding and in the hands of the public for five or more years "upon which no default in payment of principal or failure to pay the return fixed, has occurred for a continuous immediately preceding period of five years."

In short, if the security to be sold falls within one or more of the above classifications, it is an exempt security and thus does not come within the purview of the Act.²⁸ The question has arisen several times, however, as to whether a particular security actually falls within one of these classifications. The so-called non-profit exemption furnishes an example. In order to qualify as an exempt security under this classification the organization offering the securities for sale must have been organized *exclusively* for non-profit purposes. In addition, "no part of the net earnings" can inure to the benefit of any private shareholder or individual. The point is that although securities of a particular organization meet *one* of the statutory requirements, it is not sufficient. In order to qualify for exemption *each* of the require-

24. Section 517.05.

25. E.g., Home Owners Loan Corporation securities.

26. Under this subsection (517.05[4]) exemption is also provided in Canadian securities subject to Canadian government or provincial rate or issuance supervision.

27. With the proviso that the "collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes or other evidences of indebtedness so secured."

28. Attention is called to the fact, however, that even some exempt securities must be sold by a registered dealer.

ments must be fulfilled. In this connection, although the question has not yet been raised, there is a strong probability that securities of *consumers'* cooperatives would not qualify as exempt securities for the reason that part of the net earnings are turned back to the members.²⁹ With regard to agricultural cooperatives, however, the Act was amended at the 1951 session of the Legislature to provide for exemption of their securities, provided that they operate "wholly within the borders of a single county and all stockholders are bona-fide legal residents of such county and no non-resident promoter is interested therein."³⁰

Special note should also be taken of the listed securities exemption. Although securities listed on a recognized stock exchange are exempted from registration, the Commission is granted discretionary authority to deny such an exemption at any time.³¹

(b) *Exempt Transactions*

Although the particular *security* may not be exempt, the client proposing to sell the security may nevertheless be free of regulation under the Act if the *transaction* is exempted from its operation.³²

At the very outset it should be made clear that the Act impliedly provides and the Commission administratively takes the position that it is not a violation of the securities law for any number of individuals to combine for the purpose of organizing a corporation. No permit from the Securities Commission is required for this purpose; the permit becomes necessary when the corporation proposes to *further distribute* its securities publicly. In brief, those persons who, by virtue of being actual incorporators, are entitled to subscribe to capital stock of the corporation when it becomes a legal entity are considered as being part of a closed group, with complete knowledge of the proposed undertaking; and there is *no element of a public offering*. Consequently the Florida Securities Act is not applicable to such a situation. Put another way, where a group consisting of three or more persons meets, without solicitation among themselves, for the common purpose of forming a corporation in accordance with the Florida corporation statutes, and such persons become subscribers to the application for a corporate charter, the Florida Blue Sky law does not come into play.³³

29. See Sowards, *Should Co-ops Pay Federal Income Taxes?*, 19 TENN. L. REV. 908 (1947).

30. House Bill No. 747. This bill became a law without the Governor's approval on June 11, 1951.

31. Section 517.05(6)(7). It should also be stressed that listed securities are not exempted under this section on notice of issuance, but must actually be listed in a duly authorized manner. To permit sales merely on notice of issuance would be tantamount to allowing free trading of such securities in Florida before they could be traded on the listing stock exchange.

32. Section 517.06.

33. Suppose, however, as frequently happens, that "dummies" are listed in the articles of incorporation in lieu of the true original subscribers. In such a case this fact should be reflected in the minutes of the organizational meeting of incorporation, wherein it should be stated that those original subscribers not actually listed in the articles therefrom

Of practical significance here is that section of the Florida corporation statutes which provides that three or more persons may form a corporation. Lawyers are apt to think of this section in terms of three persons only. But the statute does not say *how many more*. Suppose, for example, that thirty persons are incorporators who subscribe to the original capital stock of ABC, a Florida corporation. As long as these thirty persons are really *incorporators* of ABC, it would seem that their purchases of ABC's securities would not constitute a public offering and that the Act would not be applicable.

Suppose, however, that the number of actual incorporators is small but that there are other persons, *not* incorporators, who wish to subscribe to the capital stock. Of practical importance at this point to the attorney is the so-called "pre-organization exemption."³⁴ Under this subsection any amount of money may be raised *before* incorporation from not more than twenty-five subscriptions for shares of stock. Such subscriptions, even from outsiders, are specifically exempted transactions. Instances are numerous where attorneys for corporate groups learned of this exemption only *after* incorporation, at which time it was too late. Three statutory provisos in connection with this subsection should be noted. First of all, the subsection itself provides that the exemption is available only "when no expense is incurred, or no commission, compensation or remuneration is paid or given for or in connection with the sale or disposition of such securities." The other two restrictions are contained in another subsection.³⁵ The first of these requires that written notice be given to the Commission³⁶ and its approval be granted *in advance* of the sale of the securities. Finally, the Commission "may" require any funds received from such security sales to be placed in escrow pending its further order. Administratively, the Commission has made this "may" a "must;" it is necessary to file an escrow agreement with the Commission, placing in escrow the subscription funds until the corporation is actually formed and becomes a legal entity, at which time the corporation will request the Commission to release the funds in escrow. Upon approval of this request by the Commission, the funds in escrow are released by the escrow agent to the treasurer of the new corporation. A suggested form of escrow agreement for use in connection with this exemption may be obtained from the Commission.³⁷

for the sake of convenience, but that they were the true original subscribers, entitled to all the privileges of original subscribers as though they had in fact actually subscribed to the charter application.

34. Section 517.06(10).

35. Section 517.06(15).

36. The Commission requires that this notice be given in triplicate.

37. With regard to the escrow agreement, it is often advantageous to both the principals and to the subscribers to insert a provision for a definite time period within which the subscription funds must be raised, and in the event that this does not materialize as stipulated, that the escrow agent is authorized to return the funds to the subscribers. Any other additions that are deemed advisable in a particular situation may also be made. However, no deletions from the Commission's form should be made.

Closely allied to the pre-incorporation exemption is the *post-incorporation* exemption.³⁸ Under this exemption a *Florida* corporation can sell its shares free of registration provided that its total number of shareholders does not exceed twenty after such sales and provided that the "total face amount or total sales price of such shares does not and will not after such sale exceed ten thousand dollars." Suppose, for example, that ABC, a Florida corporation, has five shareholders and a total of \$5,000 face amount of stock outstanding, and that it wishes to increase its authorized capitalization by another \$5,000. Suppose further that it proposes to sell the new securities to fifteen new subscribers. In such a situation, since ABC will have but twenty shareholders and a total face amount of \$10,000 in outstanding shares after the new sales, it may avail itself of the exemption. Suppose, however, that ABC already had raised the sum of \$10,000 among twenty-five or less subscribers, having filed notice of exemption under the pre-incorporation exemption section when it did so, and now files notice of exemption under the post-incorporation exemption section on the basis that it will *now* sell to less than twenty new subscribers, the total sales price of such *new shares* not to exceed \$10,000. Under these facts, the Commission has taken the position that ABC would not be entitled to the post-incorporation exemption for the reason that the total sales price would exceed \$10,000. In short, this means that the total sales price of *all stock* issued cannot exceed \$10,000 and the *total number of shareholders* cannot exceed twenty for this exemption to be applicable.³⁹ Here again it should be emphasized that, as in the case of pre-organization exemptions, advance notice of such sales must be given to the Commission and approval granted.⁴⁰ Also, no expenses may be incurred or commissions or other remuneration paid or given for or in connection with the sale or disposition of such securities.

Another exempted transaction of especial significance, and one which has caused no little consternation is the "isolated sale" exemption.⁴¹ The Act exempts the "isolated sale of securities when made by or on behalf of a vendor *not the issuer or underwriter thereof* . . . and such sale is not made directly or indirectly for the benefit of the issuer or underwriter of such securities. . . ." (italics added). Emphasis should be placed on the fact that the word "sale" is in the singular. The question is then immediately presented as to whether (a) more than one shareholder in a single corporation can qualify for this exemption; and (b) one shareholder can qualify if he makes more than one sale of his shares in a single corporation.

With regard to (a) it seems obvious that the legislative intent was not to limit the advantages of the exemption to a single shareholder. If, for example, A, B and C are shareholders of the ABC corporation, there would

38. Section 517.06(11).

39. See OP. ATT'Y GEN. 041-402 (July 25, 1941).

40. Section 517.06 (15) requires advance notice of all of the exempted transactions enumerated in §§ 517.06(8) through 517.06(12).

41. Section 517.06(3).

seem to be no logical reason why all three might not sell their shares in isolated transactions. But, if A, B and C sell their shares "on behalf of . . . the issuer" even though each one sells his own shares individually, a public offering, not an isolated sale, will result. In other words, one of the objectives of the Act is to provide for registration of securities when there is a public offering. The exemption in question provides for situations where a shareholder "disposes of his own property for his own account." In the normal situation when Mr. A, a stockholder in ABC, decides for reasons of his own to sell his shares, that sale constitutes a true "isolated sale."

Suppose further that for other reasons, Mr. B or Mr. C later decide to sell their shares in ABC. These, too, could be isolated sales. On the other hand, if, as part of a common scheme, A, B and C sell their shares to others, the exemption would not be applicable.⁴² In all probability this would be the case even if such sales were made at different times. The point is that if the sales are effected as a part of a common plan to distribute ABC stock to the public, registration is mandatory.

With regard to (b), much the same reasoning is applicable. Again it seems clear that the legislative intent was not to preclude a shareholder from disposing of his stock piecemeal. Thus our Mr. A could safely dispose of his shares in ABC on different occasions, providing that the different sales are detached and separate. However, if these sales are part of a plan to evade the provisions of the Act, the exemption is lost. Although there are no Florida court decisions on this point, judicial authority in other jurisdictions having similar statutory language is ample. The Supreme Court of Pennsylvania has explained this situation in simple terms:

. . . The word 'isolated' is not a word of art or of technical meaning. In common as well as universal usage it means *standing alone, detached, separate*. It is the opposite of the counterterm—the antonym—of 'repeated' or 'successive.' Whether sales of stock by an owner are isolated or repeated and successive transactions indicating a course of dealing must depend upon the facts of each case in the light of the purpose of the act. We have no doubt that the unscrupulous would like to have the limits of 'isolated transactions' defined and would welcome a definite statement of how many fraudulent sales they may make within a given time without risking the penalty of the act. But the legislation was enacted not to foster fraud but to prevent it.⁴³

The exemptions just discussed are perhaps the more common ones. Remaining exempted transactions include: sales of securities at a judicial, executor's, or guardian's sale and securities sold at receivers' or bankruptcy

42. Section 517.06(3) also contains express language to the effect that such sales cannot be "for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter."

43. *Commonwealth v. Summons*, 157 Pa. 95, 98, 41 A.2d 697, 698 (1945). To the same effect see *Brannon, Beckham & Co. v. Ramour*, 41 Ga. 166, 152 S.E. 282 (1930); *Kneeland v. Emerton*, 280 Mass. 371, 183 N.E. 155 (1932); *Ersted v. Hobart Howey Co.*, 299 S.W. 66 (S.D. 1941); Note, 87 A.L.R. 1 (1933).

sales;⁴⁴ stock dividends; securities issued in reorganization proceedings and issuance of additional capital stock by a corporation "among its own stockholders exclusively" and unaccompanied by commissions;⁴⁵ security sales, transfers or deliveries to a bank, trust company, insurance company or corporation;⁴⁶ *unsolicited* security sales by a Florida bank acting as an *agent* with a profit of not over two per cent of the total sales price;⁴⁷ sales of securities by a pledge holder or mortgagee in the ordinary course of business to liquidate a bona fide debt;⁴⁸ securities issued in merger or consolidation proceedings;⁴⁹ sales of secured bonds or notes, if secured by realty or tangible personal property in Florida where the bonds or notes are sold to not more than twenty purchasers and the total face amount is not in excess of \$10,000;⁵⁰ securities issued as a result of the exercise of a conversion option;⁵¹ and the sale of securities issued by public utility corporations operating in Florida, or the securities of any public utility controlling such Florida corporations which are subject to regulation by federal or state public service commissions if such securities are "exempt securities" under Section 517.05.⁵² In 1947 the Act was amended to exempt the purchase or sale of securities by a registered dealer provided that such transactions are not for the benefit of an issuer or underwriter.

IV

REGISTRATION REQUIREMENTS AND TECHNIQUE

(a) *Registration by Qualification*

Unless the securities to be sold are exempt securities or unless they are sold in exempt transactions, they cannot be sold in Florida without first being registered.⁵³ The Act provides for three different methods of registration, each one specifically tailored to fit a certain type of public offering. Assuming, then, that the securities his client proposes to sell are required to be registered, the first decision the attorney must make is which of the three procedures is appropriate.

First of all, suppose that the corporation or other organization desiring to sell securities is a new one either in the sense that it has been in continuous operation for less than three years or that its securities have been in the hands of the public for less than one year.⁵⁴ If such is the situation, or if

44. Section 517.06(1).

45. Section 517.06(4).

46. Section 517.06(5).

47. Section 517.06(13).

48. Section 517.06(2).

49. Section 517.06(6).

50. Section 517.06(8).

51. Section 517.06(9).

52. Section 517.06(12). Prior to this amendment, registered dealers unsuccessfully had claimed exemption under § 517.06(3). See *OP. ATT'Y GEN.* 046-515 (Dec. 9, 1946) and § 517.06(14).

53. Section 517.07.

54. See sections of this article on registration by notification and by announcement, *infra*, for a more detailed discussion of these methods of registration in Florida.

the organization is an established concern whose earnings will not permit registration by notification, the securities must be registered by *qualification*.⁵⁵ This method of registration requires a standard form to be filled out by the issuer of the securities or a registered dealer; this form must be accompanied by specified exhibits. "Form 8" is the form prescribed by the Commission. It requires, in question and answer form, submission of certain information respecting the issuer which the Act itself requires each applicant to submit, "and such other relevant information as the Commission may in its judgment deem necessary" In general, the information and exhibits which must be submitted pertain to the financial history and structure of the issuer and the character and background of its members.

Most of the information items in Form 8 as well as the various exhibits are self-explanatory; to treat them in detail here would serve no useful purpose. Practical advice, however, on preparation of the forms and exhibits as a whole is in order. First of all, it is well to bear in mind that an answer should be given to every item contained either in Form 8 or in the exhibit forms. In the event that the question is not applicable to the particular situation the words "not applicable" should be inserted. A careful analysis of these forms and the use of intelligent interpretation of what is required will greatly assist the attorney in the compilation of this type of application.⁵⁶

In compiling the information required to be submitted in connection with Exhibit Form 1, which is used in conjunction with Form 8, the practical approach is to set up each item by number and heading, with the appropriate subdivisions (a, b, c, etc.), keeping in mind that should the last subdivision terminate in the middle of a page, the next item and heading should be started on a new page. If this is done, should any corrections or amendments to the application become necessary or desirable, they can be inserted without the necessity of recompiling the entire Exhibit Form 1. In addition, this procedure also facilitates examination of the application by the examiner, who must process it and submit a report and recommendation to the Commission. Complete instructions for the compilation of material required by Exhibit Form 1 are contained therein.

Special attention should be focused on item 4 of Exhibit Form 1, "Promotion Stock." In this connection, any stock that has been or will be issued for any patent right, copyright, trademark, process, formula, or for good will, organizational or promotional fees or expenses or other intangible assets must be placed in escrow with the Commission as provided in a sub-

55. Section 517.09.

56. There should be no inclination to read into the language contained in these forms something that is not there. For example, in Exhibit Form 1, items 18 and 26 deal with the purchase of other property and contracts "not in the ordinary course of business." It is quite possible that the matters covered in these two items may prevail "in the ordinary course of business" in which event, of course, the information would not be in order.

sequent section.⁵⁷ Similar note should be taken of item 14, Exhibit Form 1, "Options for Purchase of Stock." In line with the attitude of other state securities commissions, the Commission has taken the position that stock options are potentially dangerous to the remaining shareholders;⁵⁸ any application including stock option rights or privileges faces probable denial of registration. In short, the Commission has attempted to insure that the investing public is protected as fully as possible and at the same time has attempted not to hamper the issuer in any unreasonable manner. Along these same lines, while it is neither "law" nor administrative regulation, it has been administrative principle for the Commission to require that the applicant for registration have in *tangible* assets at least 25% of the total amount of funds sought to be raised by a public offering.

If the application for registration by qualification is filed in the proper manner, and if upon examining it the Commission finds that sale of the securities would not be fraudulent or tend to work a fraud on purchasers, and that the enterprise "is not based on unsound business principles," the securities are then registered and may be sold by the issuer if the issuer registers as a dealer to sell them, or a registered dealer after notification as provided in Section 517.12.

(b) *Registration by Notification*

If the organization proposing to sell securities in a public offering has been in continuous operation not less than three years and its earnings measure up to certain definite statutory requirements, its securities are entitled to registration by notification.⁵⁹ Depending upon the type of security to be sold, these requirements compel certain average annual net earnings⁶⁰ to have been maintained during a period "acceptable to the Commission." While the Act provides that this period "shall be not less than two years nor more than ten years," it should be noted that, within this time limitation the Commission, not the issuer, determines how many years earnings must be shown.

The procedure for registration by notification is less involved than that for registration by qualification. Either the issuer or a registered dealer must file with the Commission a statement containing just five items of

57. Section 517.18. This section provides that the owners of the escrow securities placed in escrow cannot withdraw them from escrow "until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent shown to the satisfaction of said Commission to have been actually earned on the investment in any common stock so held." The escrow agreement, suggested forms for which are obtainable from the Commission, must be submitted in triplicate.

58. See Note, *The Legality of Stock Option Grants to Corporate Officers*, 49 Col. L. Rev. 232 (1949).

59. Section 517.08.

60. In addition to specifying certain minimum annual average earnings standards for ordinary bonds, preferred stock and common stock, this section sets up earnings standards for other special types of securities, such as secured real estate bonds, municipal bonds, and the like.

information.⁶¹ Upon proper compliance with this procedure, the securities may be sold. Suppose, however, that the information furnished is false or misleading. In that event, or if the Commission finds that the sale may tend to work a fraud, this section provides that the Commission may require further information to be furnished in order to determine whether the registration is subject to revocation on grounds specified in Section 517.11. In addition, the Commission is empowered to issue a "stop order" suspending the right to sell such securities pending further investigation. The issuer may then request a hearing, but if no such hearing is requested within twenty days of the entry of the order, or if at the hearing the Commission determines that the securities are not entitled to registration by notification, or that the registration should be revoked, it must "enter a final order prohibiting sales of such security, with its findings with respect thereto." Of course, the issuer may take an appeal from such a final order.⁶²

Finally, in connection with both registration by qualification and registration by notification, the value to an attorney and his client of the services of a qualified accountant cannot be overemphasized. In the proper compilation and preparation of financial data complex problems may well be presented. By all means, unless the attorney himself is an accountant, he should obtain the services of one, for no matter how proficient the attorney may be in his own profession, it is little short of foolhardy for him to attempt to arrive at a correct solution of a problem foreign to his training and ability. Previous experience on the part of the authors has demonstrated that, in the long run, both time and money are thereby conserved.

(c) *Registration by Announcement*

In 1947 the Act was amended to provide for a new type of registration specifically tailored to fit securities such as those traded "over-the-counter" or those securities not sold as part of a new public offering when a dealer takes a principal position rather than acting as an agent: registration by announcement.⁶³ In short, it was apparent that the securities of numerous corporations which had been established for many years were in the hands of the public and were being bought and sold almost daily although not listed on any organized stock exchange. It was felt that the existing statutory methods of registration were not suitable for dealers' transactions in this type of corporate security. Accordingly, this amendment provided that any securities "outstanding and in the hands of the public for not less than one year as the result of a prior original marketing by the issuer . . . shall be entitled to registration by announcement." It will be seen at once that

61. Section 517.08(2). The five items are: name and location of issuer; brief description of the security, including the amount of issue; amount of the securities to be offered in Florida; brief statement showing that the security qualifies for registration by notification; and the maximum price at which securities are to be offered for sale to the public.

62. See § 517.24.

63. Section 517.091.

the words "in the hands of the public" and "prior original marketing" are especially significant in determining whether the securities of a particular corporation qualify for registration under this section. One point is clear at the outset: the fact that corporate securities have been outstanding for one or more years does not of itself qualify them for registration by announcement. There must have been an actual public offering of these securities. Suppose, for example, that ABC, a Florida corporation, issues its authorized stock to the subscribers to its certificate of incorporation, and that these shares remain in the hands of the incorporators for ten years. Since it is obvious that the legislature intended the marketing of the securities to be "public," the ABC securities would not qualify for registration by announcement. Put another way, when a corporation issues its authorized stock to the subscribers, a closed group, there is no "original marketing" within the language of the section. Or, suppose again that ABC availed itself of the pre-organization exemption in Section 517.06(10), selling subscriptions to 25 subscribers *other than the incorporators*. Again, it is doubtful that the offering of pre-organization subscriptions would constitute a "prior original marketing" within the contemplation of the Act or that such stock in the hands of these subscribers is stock "in the hands of the public."

As might be expected, the procedure for registration by announcement is exceedingly simple. The registered dealer files a written announcement of his intention to trade in the securities. This announcement need only contain the name and location of the issuer, a brief description of the security and a statement that the securities have been outstanding and in the hands of the public not less than one year as the result of a prior original marketing by the issuer or an underwriter on behalf of the issuer.

This section, however, contains the proviso that such securities must be sold at a price "reasonably related to the current market price of such security at the time of sale." In addition, such securities can be sold only by a dealer registered with the Commission and not "directly or indirectly for the benefit of the issuer. . . ." There is a \$10 fee payable at the time of filing the announcement.⁶⁵

V

REVOCATION OF REGISTRATION

The Act provides for revocation of registration of securities upon certain enumerated grounds.⁶⁶ In part, these grounds are that, if upon examination the Commission finds that the issuer is insolvent, or has made fraudulent representations in its prospectus or other selling literature, or is of bad

64. See OP. ATT'Y GEN. 047-430 (Dec. 15, 1947), OP. ATT'Y GEN. 051-455 (Dec. 14, 1951).

65. For fees in connection with registration by qualification see § 517.09(6) (minimum \$40, maximum \$500); for registration by notification see § 517.08(2) (g) (minimum \$20, maximum \$200).

66. Section 517.11. This section should be thoroughly explained to a client desiring to register a security.

business repute, or "has its affairs in an unsound condition," the Commission may issue a revocation order, precluding the sale of the securities. To facilitate examination by the Commission in order to determine whether those or any of the other enumerated grounds for revocation exist, the Act gives the Commission power to compel production of the issuer's records and to administer oaths to and examine its officers. Should the issuer refuse to permit an examination to be made by the Commission, that fact of itself is made a ground for revocation of registration.⁶⁷

VI

REGISTRATION OF DEALERS AND SALESMEN

In addition to providing for direct control of securities through their registration, the Act provides for indirect control of securities through registration and *regulation of dealers and brokers and their salesmen*.⁶⁸ This latter type of control is effected by licensing requirements under which the Commission is given power to examine closely the applicant's character and background.⁶⁹

It is important to note here that even some exempt securities must be sold by a registered dealer. A question frequently asked is whether the issuer itself may publicly sell its securities. The answer is, yes, but in this event the issuer will then be deemed a dealer and thus must first register as such. Upon registration as a dealer, the issuer's principal officers can sell its shares.

A previous subsection, 517.02(4), should also be consulted. This subsection defines several types of activities as those of a "dealer." For example, investment advisers are included in the definition of "dealer" and are thus subjected to Commission regulation.⁷⁰ On the other hand, certified public accountants and practicing attorneys performing "any of said services [issuance of financial reports and giving of investment advice] in connection with the regular practice of his profession" are specifically excluded from the definition of "dealer" by this subsection.

It seems clearly in line with legislative intent that one who engages in securities transactions cannot place a label upon himself and his activities so as to fall outside the purview of the Act. For example, in a relatively

67. Here again the issuer or dealer applying for registration is afforded hearing and appeal privileges.

68. Section 517.12. As to the constitutionality of the section see *State v. Minge*, 19 Fla. 515, 160 So. 670 (1935); *State v. Knott*, 114 Fla. 120, 154 So. 143 (1934).

69. A dealer's annual registration fee is \$100, while that of a salesman is \$20. Each dealer-applicant is required to file a \$5000 surety bond; the salesman operates under the dealer's bond. Dealers' commissions cannot exceed 20% of the aggregate sales price of the securities. If the issuer desires to sell the securities itself, it must register as a dealer (unless the sale is an exempt transaction), in which event any of its officers can sell its shares. See §§ 517.12-517.15.

70. Since the term "investment adviser" includes "every person who in this state for compensation engages in the business of advising others . . . through publication . . ." it would appear that even an out of state "advisory service" which inserted advertisements in a Florida newspaper offering investment advice, is subject to registration under the Act.

recent situation a Florida municipality decided to issue refunding bonds in lieu of certain outstanding bonds, and in this connection entered into an agreement with an individual who was to act as "exchange agent." This individual was obligated to place a bid of par and accrued interest as to all refunding bonds offered for sale and was also authorized to deal in these bonds for his own account. For his services he was to receive a commission. The Attorney General in an opinion requested by the Commission⁷¹ stated that the "exchange agent" was in reality a "dealer" within the Act's definition. What he really did, not what he called himself, was the controlling factor.

With regard to preparation of the application for registration as a dealer, certain situations which have caused difficulty in the past form a basis for some practical observations. First of all, it is suggested that counsel carefully interrogate each officer, director, or partner before accepting an answer to items 8, 9 and 10 of the application form. Item 8 deals with past violations of the securities laws of any state; item 9 is concerned with criminal convictions; and item 10 asks whether the applicant has ever been declared a bankrupt or been in the hands of a receiver. Under item 21(a) of the application form, which requires five letters of recommendation, it should be noted that the required five letters must be submitted for *each* of the applicant's officers, directors, partners⁷² and principals.

It has been pointed out previously that the Commission is granted the power to revoke the registration of securities. The Act gives similar power with regard to dealers and salesmen.⁷³ Again, certain grounds for revocation are enumerated. Among them are the making of materially false statements in the application, fraudulent acts in connection with sale of securities, concealment of a material fact from a buyer of a security and improper handling of funds.⁷⁴

VII

CIVIL AND CRIMINAL LIABILITY: LEGAL AND EQUITABLE RELIEF

(a) *Injunctive Relief*

Suppose that an interested party feels that the proposed sale of securities will operate as a fraud. He need not wait until the fraud is perpetrated and then pursue his statutory or common-law remedies. The Act specifically makes equitable relief available to him. Upon his complaint, the Commission will investigate, and if it "shall appear . . . that in the issuance, sale, promotion, negotiation, advertisement, or distribution of any securities"

71. OP. ATT'Y GEN. 050-446 (Sept. 15, 1950). See also OP. ATT'Y GEN. 041-644 (Nov. 14, 1941); cf. *Fee and Liddon v. State*, 116 Fla. 568, 156 So. 541 (1934).

72. In the event of registration as a dealer by a partnership, it is not necessary for either of the partners to register as a salesman in order to solicit in Florida, because partners are considered "dealers," and as such they have the right to solicit. See § 517.02(6).

73. Section 517.16.

74. Again, reasonable notice and hearing provisions are present. See *State v. Lee*, 153 Fla. 652, 15 So.2d 442 (1943).

in Florida, including exempted securities and exempted transactions, that any person is acting as a dealer or salesman without being registered, the Commission is empowered to bring an action in the name of the state against such person to enjoin the continuance of the fraudulent practice or unlicensed activity.⁷⁵

(b) *Remedies Available in Case of Unlawful Sale*

There are few court decisions dealing with the civil liability sections of the Act. This fact would indicate that the Commission has done its job well. In short, if the Act is properly administered *most* of the damage will be *prevented* from ever occurring; it will be stopped before it gets started rather than remedied after it happens. No commission, however, no matter how alert and efficient, could prevent all frauds or violations of the Act from occurring; it behooves the attorney, then, to become familiar with remedies available to his client.

Every sale made in violation of any of the provisions of the Act is declared "voidable" at the election of the purchaser.⁷⁶ Of practical importance to the attorney and his client, however, are the following questions: Who is liable? What is the measure of recovery?

With regard to persons liable, the Act provides that "the person making such sale and every director, officer or agent of or for the seller, if the director, officer or agent shall have personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser . . ."⁷⁷ It will be seen at once that, with regard to directors, officers and agents, the words "personally participated" are key words. Just what constitutes personal participation is not clear. In *Nichols v. Yandre*⁷⁸ the president of a corporation sold stock to the plaintiff in violation of the Act. Subsequent approval of this sale by the board of directors was held not to constitute personal participation so as to render the directors liable under this statute. In reaching this decision the court emphasized that the defendant directors took no "active part" in the transaction. "That language [of Section 517.21] implies some activity in inducing the purchaser to invest. . . ."⁷⁹ Apparently the court would insist on actual influence being exerted by defendant directors on a buyer as a condition precedent to liability on a "personal participation" basis; approval of an associate's act in

75. Section 517.19. In *Ryan v. State*, 131 Fla. 486, 494, 180 So. 10, 13 (1938), it was held that the violations enumerated in this section might be enjoined by the Commission if the defendant "shall have done, or is now doing, or is about to do" the thing complained of. See also § 517.20 and 517.24 on hearings and judicial review.

76. Section 517.21. "A majority of the state statutes specifically include some sort of provision to the effect that sales or contracts in violation shall be 'void' or 'voidable.' Is there any difference? In most cases, no; whether a contract is declared to be 'void' or 'voidable,' the injured party can usually escape liability, and more often than not that is the only question involved." LOSS, SECURITIES REGULATION 962 (1951). See also RESTATEMENT, CONTRACTS § 475, comment b (1932).

77. Section 517.21. See Note, 144 A.L.R. 1351 (1943).

78. 151 Fla. 87., 9 So.2d 157 (1942).

79. *Id.* at 95, 9 So.2d at 160.

this connection does not constitute such participation. At this point it must be remembered that an officer or director who commits a tort is liable at *common law* to a person injured thereby. Suppose, for example, that an officer or director fraudulently sells securities. Now, it happens that this conduct is a violation of the Act, but the Act in this respect is merely declaratory of the common law. Accordingly, the officer or director is liable independently of statute.⁸⁰

The Act, as a condition precedent to rescission and liability, requires the buyer to *tender* the securities sold. Numerous problems can arise in this respect. What constitutes good tender? Would tender be necessary if the securities were worthless? Suppose a buyer has resold part of the securities purchased. May he affirm his purchase as to that part and tender and rescind as to the remainder? Suppose the buyer resells the securities *before* he discovers that they were sold to him in violation of the Act, and he then repurchases the same amount of equivalent securities for purposes of tendering them in a rescission action? These and other questions have not been presented to the Supreme Court of Florida for consideration. They have arisen in other jurisdictions, however, and an able discussion concerning them may be found in a new treatise on securities regulation.⁸¹

With regard to the measure of recovery, the Act provides that the seller is liable "for the full amount paid by such purchaser, with interest, together with all taxable court costs and reasonable attorney's fees." The buyer has two years from the date of the illegal sale to bring an action for recovery of the purchase price. Special attention, however, is called to an additional limitation period provision which precludes any action by the buyer if he does not accept a written offer by the seller within 30 days after it is made to take back the securities and refund the purchase price plus interest.⁸²

(c) *Criminal Liability*

Not so long ago a Florida newspaper carried the following item:⁸³

It's possible to get off with a light fine for swindling the public out of a fortune under the Florida securities regulation, but it doesn't pay to steal a hog. You go straight to jail. The securities law provides for a maximum fine of \$1,000 or up to two years in the clink. Hog-stealing is handled under a special statute that provides for no fine but a jail sentence from two to five years. Steal a second hog and you get from five to 20 years.

80. Section 517.22 provides that "nothing in this chapter shall limit any common law right of any person to bring any action in any court for any act involved in the sale of securities, or the right of the state to punish any person for any violation of any law." See also § 517.23, which contains the provision that "The same civil remedies provided by laws of the United States now or hereafter in force, for the purchase of securities under any such laws, in interstate commerce, shall extend also to purchasers of securities under this chapter."

81. Loss, *op. cit. supra* note 76, at 969-972.

82. Section 517.21 also specifically provides the manner in which this interest is to be computed. See *Kenholz v. Bache*, 184 F.2d 974 (5th Cir. 1950).

83. Miami Daily News, Feb. 21, 1951, p. 1, col. 4.

Perhaps it was mere coincidence, but that same year, 1951, the legislature amended the Act to provide for a maximum fine of \$5,000 or imprisonment for not more than five years.⁸⁴ One factor sometimes overlooked in this connection is that *each sale* in violation of the Act may constitute a *separate count* in a criminal charge.

VIII

FEDERAL-STATE AND INTERSTATE CONFLICT OF LAWS

The argument has frequently been used by attorneys that a conflict exists between the federal and state securities laws.⁸⁵ Such an argument is fallacious, for there really is no "conflict." In fact, the federal legislation is itself specific on this point, and it preserves the state laws.⁸⁶ The federal legislation contains intrastate exemptions even where the mails or facilities of interstate commerce are used. It is clear that the congressional intent was to leave the states free to exercise their own regulatory control over the sale of securities; that the states and the Federal Government should have, at most, *concurrent jurisdiction* in this field.⁸⁷

It is not the purpose of this article to delve into the innumerable instances of coordination of state and federal securities laws. The point is that there is cooperation, not friction, between the state and federal agencies in this important phase of law enforcement. In addition, a number of state legislatures have taken definite steps to achieve coordination between their laws and the Federal Securities Act. Florida has been one of the most progressive states in this regard.⁸⁸

With regard to interstate conflict of laws questions, it should be remembered that both with respect to securities⁸⁹ and dealers,⁹⁰ the Act requires registration if the securities are sold or the dealer engages in business "in the state." The Act, then, is clear in stating that even though the issuer or dealer is incorporated or located in another state, if the securities are *sold* or the dealer does business in Florida, the Florida Act is applicable. Suppose, for example, that X, a Delaware Corporation, through Y, its agent there, solicits and effects a sale in Florida. It will be noted in this example that neither X nor Y is physically within the boundaries of Florida. Unless, then, the sale was effected in an exempt transaction, such as an isolated

84. Section 517.30.

85. *E.g.*, for a recent argument of this nature and its repudiation see *Travelers Health Ass'n v. Commonwealth*, 339 U.S. 643, 648 (1950).

86. "Nothing in the subchapter shall affect the jurisdiction of the securities commission . . . of any state or territory of the United States . . . over any security or any person." Securities Act of 1933 § 18, 48 STAT. 74 (1933) 15 U.S.C. § 77a, aa (1946).

87. See Smith, *State Blue Sky Laws and the Federal Securities Acts*, 34 MICH. L. REV. 1135 (1936).

88. *E.g.*, § 517.05(4) (securities of public service utility corporations subject to the federal Public Utility Holding Company Act of 1935 come within this exemption); OP. ATT'Y GEN. 046-467 (Nov. 8, 1946); § 517.06(12); § 517.23 (granting same civil remedies as those available to purchasers under federal securities laws).

89. Section 517.07.

90. Section 517.12. This section also includes salesmen.

sale, the Florida Act would apply. This would be the case even if such a sale was effected by the use of the mails, telegraph or telephone facilities, and even though X and Y had no agents in Florida. Would such an application of the Act be constitutional? The answer is, yes, and in this connection lawyers should become familiar with the recent United States Supreme Court decision of *Travelers Health Ass'n v. Commonwealth*.⁹¹ In that case the Court held that it was within a state's police power to apply its Blue Sky law in a situation similar to the one just presented.⁹²

CONCLUSION

No piece of legislation ever drafted or enacted by a legislative body has been "perfect" in the minds of all persons who came in contact with it. The writers do not profess to advocate that the Florida securities law is any exception. Necessary amendments have been made and will continue to be made. Meanwhile, however, it is necessary for attorneys, businessmen and others who come within its purview to deal with this important piece of legislation as it exists. It is the sincere hope of the writers that this article will play some small part in familiarizing attorneys, and through them their clients, with the Act and its practical application in every-day legal and business problems.

91. 339 U.S. 643 (1950). See also *Travelers Health Ass'n v. Commonwealth*, 188 Va. 877, 51 S.E.2d 263 (1949); Note, 59 YALE L.J. 360 (1950).

92. So-called *inter partes* conflict of laws questions also pose difficult problems. Suppose that you, an investor in State A, transmit an order for stock to be accepted by me, a seller in State B. What state laws govern in such a situation? See *Doherty v. Bartlett*, 81 F.2d 920 (1st Cir.), cert. denied 298 U.S. 676 (1936) (state laws where offer made); *Robbins v. Pacific Eastern Corp.*, 8 Cal. 2d 241, 65 P.2d 42 (1937) (state laws where delivery of security effected); *People v. Hilltop Metals Mining Co.*, 300 Ill. 564, 133 N.E. 303 (1921) (state laws where acceptance occurred). See also Lorenzen, *Validity and Effect of Contracts in the Conflict of Laws*, 59 YALE L.J. 360 (1950); Note, 87 A.L.R. 42, 60-61 (1933); Note, 51 HARV. L. REV. 155 (1937).