

A-17-a
A-17
A-101-L

61-105-L

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

July 25, 1961

ALVIN E. LARSON

MORRIS ROZAR

JOHN J. CASEY

CLARK KENNEDY

Mr. Joe Sotelo, Director
Securities Division
Arizona Corporation Commission
Capitol Annex
Phoenix, Arizona

Dear Mr. Sotelo:

This will acknowledge receipt of your letter dated April 20, 1961, in which you posed the following question:

"Do the provisions of section 44-1846, A.R.S., allowing the Commission to exempt certain securities by special order allow an issuer to obtain successive exemption orders where the total sum of money raised by the sale of securities pursuant to successive orders exempting securities exceeds \$200,000?"

Since the statute is not clear on the subject and there are no cases construing this provision of our statute, or of like statutes in other states, we must look to the wording of the statute and determine the legislative intent. The statute is set forth below:

"§44-1846. Power of commission to exempt certain securities or transactions by special order.

A. The commission may in its discretion by special order exempt from registration under articles 6 and 7 of this chapter securities in an aggregate amount not exceeding two hundred thousand dollars upon written petition and upon a showing by the issuer satisfactory to the commission that registration is not essential to public interest or for the protection of investors by reason of the special characteristics of the securities or transactions, or the limited character and duration of the offering, or the special characteristics or limited number of the offerees or investors.

Mr. Joe Sotelo, Director
Securities Division
Arizona Corporation Commission

61-105-L
Page 2
July 25, 1961

B. Special orders issued under this section shall each relate to a specific issuer and issue and shall not add any class of securities or transactions to those exempt under §§ 44-1843 and 44-1844, shall be revocable at the discretion of the commission, and shall not relieve the issuer from the application of any of the provisions of this chapter except §§44-1841 and 44-1842.

C. A petition filed under this section shall be accompanied by a fee equivalent to one-fiftieth of one per cent of the aggregate amount of the offering, but in no instance shall be less than twenty-five dollars. No fees shall be returnable irrespective of the nature of the action upon the petition to which the fee attaches." (Emphasis supplied)

We first note that "the Commission may in its discretion by special order exempt.....securities in an aggregate amount not exceeding \$200,000 upon written petition....." The use of the words "special order" and "petition" in the singular tends to indicate that the legislature intended for the \$200,000 limitation to apply only to each petition filed and special order issued.

If it was intended that an issuer would be able to file more than one petition, this would indicate that the \$200,000 limitation was not meant to apply to the total lifetime exemption of an issuer. It is indicated in the statute that more than one petition is contemplated by the listing of several separate grounds upon which securities may be exempted and the working in plural form in subsection (B), "special orders issued under this section shall relate to a specific issuer and issue...."

If the words "special order" and "petition" in subsection (A) of the statute were construed to mean that each issuer could file only one petition during its lifetime, and that that petition was limited to \$200,000, then the language in subsection (B) would be inconsistent in referring to "special orders" in the plural and the statement that the orders must each relate to a specific issue.

Further support that the \$200,000 limitation is not cumulative and that more than one petition is contemplated, is found in subsection (C) which, in setting the fee, speaks of the aggregate amount of the offering contained in a petition. Thus "aggregate amount" pertains to the amount set in any single petition and not to an amount accumulated over the lifetime of the corporation.

Therefore, an issuer can make several offerings, each being

Mr. Joe Sotelo, Director
Securities Division
Arizona Corporation Commission

61-105-L
Page 3
July 25, 1961

in an amount not to exceed \$200,000 and, providing the other provisions of the statute are complied with, qualify each time for the exemption provided for in A.R.S. §44-1846.

It must be kept in mind that each exemption order must relate to a specific issue, and therefore an order could not be issued exempting an offering which is part of an offering previously exempted. For the purpose of determining whether a petition relates to a specific issue, the Securities Division could probably adopt the "single issue theory" evolved by the Securities and Exchange Commission, as stated in the Matter of Unity Gold Corporation, 3 SEC 618 (1936):

"The determination whether securities are being offered as part of a single issue will depend upon the consideration of various factors concerning the methods of sale and distribution employed to effect the offerings and the disposition of the proceeds. If the offerings may be segregated into separate blocks, as evidenced by material differences in the use of the proceeds, in the manner and terms of distribution, and in similar related details, each offering will be a separate issue. In the main, of course each case must be determined upon the basis of its own facts."

Therefore, it is the opinion of the Attorney General that the provisions of A.R.S. §44-1846 allow an issuer to obtain successive exemption orders in excess of \$200,000 so long as each order does not exceed \$200,000. Each order must relate to a specific issue and the other requirements of A.R.S. §44-1846 must be shown to the satisfaction of the Commission.

I trust this will assist you in your problem.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

ALVIN E. LARSON
Assistant Attorney General

AEL:lmh