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R75-460

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ATTORNEY GENERAL

August 1, 1975

75-249

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ARIZONA ATTORNEY GENERAL

Mr. George M. Dempsey
Executive Secretary
Arizona Corporation Commission
2222 West Encanto Blvd.
Phoenix, Arizona 85009

Dear Mr. Dempsey:

You have requested a legal opinion concerning the following question:

Is the membership certificate issued by the Sunburst Farms (Glendale) Mutual Water and Agricultural Company in violation of the Arizona Securities Act?

After reviewing available information concerning this transaction, it is my opinion that such a certificate is not a "security" as defined by the Arizona Securities Act (§§ 44-1801, et seq.) and, therefore, such certificate is not issued in violation of the registration provisions of the Act.

It is my understanding that persons purchasing homes from the developer were required to join this mutual water corporation only as an incident to that purchase. The purpose of this corporation was to provide, on a nonprofit basis, irrigation water to the homeowners. Membership in the water corporation apparently was limited to the homeowners in that development.

We indicated in Attorney General Opinion 61-54 that shares in a cooperative nonprofit housing association were not securities because the purchasers primarily were interested in obtaining a place to live rather than deriving profit or income from an investment opportunity. The same appears the case here. There is little evidence that the purchasers in the present transaction were seeking more than attractive housing.

The United States Supreme Court in a recent similar case held:

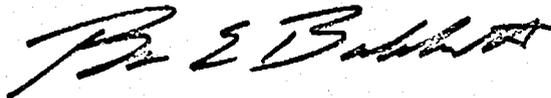


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We decide only that the type transaction before us, in which the purchasers were interested in acquiring housing rather than making an investment for profit, is not within the scope of the federal securities laws. United Housing Foundation, Inc. v. Forman, 43 LW 4742, at 4749.

Where the acquisition of housing is the primary intent of the purchaser, rather than seeking investment profit, then the incidental membership in a homeowner nonprofit water company only by homeowners, who then receive certificates of that membership, is not the issuance of securities. However, if it could be shown that the developer emphasized investment rather than features of the home, then a different opinion would be in order.

Sincerely,



BRUCE E. BABBITT
Attorney General

BEB:GLS: cmp