

Chapter 59

Securities (Blue Sky Law) and Crimes Involving Securities

Chapter 59

59.015

NOTES OF DECISIONS

Good faith or advice of counsel is not a defense to a sale violating this Act. *Moe v. Coe*, (1928) 124 Or 436, 263 P 925; *State v. Whiteaker*, (1926) 118 Or 656, 247 P 1077.

The Blue Sky Law is to be liberally construed to afford the greatest possible protection to the public. *Adamson v. Lang*, (1964) 236 Or 511, 389 P2d 39; *Spears v. Lawrence Sec., Inc.*, (1965) 239 Or 583, 399 P2d 348; *State v. March*, (1967) 247 Or 266, 428 P2d 894; *Karsun v. Kelley*, (1971) 258 Or 155, 482 P2d 533.

The law is a criminal statute, and is to be construed accordingly, but its scope is not to be enlarged. *Kirk v. Farmers' Union Grain Agency*, (1922) 103 Or 43, 46, 202 P 731.

The law is not subject to attack on the ground that it vests the corporation commissioner with arbitrary powers. *State v. Gerritson*, (1928) 124 Or 525, 265 P 422.

The law constitutes a reasonable regulation for the protection of the public. *American Trust Co. v. McCallister*, (1931) 136 Or 338, 299 P 319.

The law is constitutional; it is not unreasonable and arbitrary. *State v. Terwilliger*, (1933) 141 Or 372, 11 P2d 552, 16 P2d 651.

The law was enacted for the protection of the investing public. *New Amsterdam Cas. Co. v. Hyde*, (1934) 148 Or 229, 34 P2d 930, 35 P2d 980.

The law is remedial in its character and must be liberally construed so as to carry out its purpose. *Id.*

FURTHER CITATIONS: *State ex rel. Healy v. Consumer Business Sys., Inc.*, (1971) 5 Or App 19, 487 P2d 549.

LAW REVIEW CITATIONS: 47 OLR 403-416.

59.005 to 59.375

CASE CITATIONS: *Kneeland v. Shroyer*, (1958) 215 Or 67, 328 P2d 753; *Gonia v. Estep*, (1968) 251 Or 431, 446 P2d 114.

LAW REVIEW CITATIONS: 45 OLR 203-205; 47 OLR 403-416.

59.005

NOTES OF DECISIONS

The former similar statute protected the public and was to be liberally construed; it did not control the sale of all securities. *New Amsterdam Cas. Co. v. Hyde*, (1934) 148 Or 229, 34 P2d 980; *Union Land Assn. v. Ussher*, (1944) 174 Or 453, 149 P2d 568.

ATTY. GEN. OPINIONS: Applicability to transactions with Oregon residents involving interstate commerce or use of the mails, 1940-42, p 415.

LAW REVIEW CITATIONS: 7 WLJ 85.

NOTES OF DECISIONS

1. In general
2. Under former similar statute
 - (1) Broker, dealer, salesmen
 - (2) Sale
 - (3) Securities

1. In general

A franchising enterprise is an investment contract and must register if a substantial portion of the initial capital which a franchisor uses to initiate its operations is provided by franchises. *State ex rel. Healy v. Consumer Business Sys., Inc.*, (1971) 5 Or App 19, 482 P2d 549.

An investment contract, defined as a security under subsection (11), may be found by use of the "risk capital" test. *Id.*

2. Under former similar statute

(1) **Broker, dealer, salesmen.** The definition of "dealer" was considered plain, and was construed to give the words their full meaning. *Kirk v. Farmers' Union Grain Agency*, (1922) 103 Or 43, 47, 202 P 731.

A corporation not acting as an exclusive agent in an isolated sale of stock was a dealer and required to obtain a license. *Salo v. No. Sav. & Loan Assn.*, (1932) 140 Or 351, 12 P2d 765.

A corporation engaged in selling stock not issued by it, and which it never owned, was acting as a broker. *Downs v. Nat. Share Corp.*, (1936) 152 Or 546, 55 P2d 27.

One who made an isolated sale, not in the course of repeated or continuing transactions, was not a broker. *Silvertooth v. Kelley*, (1939) 162 Or 381, 91 P2d 1112.

Persons hired to produce prospects on a commission basis were not dealers, salesmen, brokers or agents within the meaning of the section. *Oxley v. Linnton Plywood Assn.*, (1955) 205 Or 78, 284 P2d 776.

(2) **Sale.** A sale was completed when the stock certificate was delivered. *State v. Gerritson*, (1928) 124 Or 525, 265 P 422.

"Sale" was intended to prohibit dealers and brokers from conducting bargainings in the state as well as making deliveries. *State v. Swain*, (1934) 147 Or 207, 31 P2d 745, 32 P2d 773, 93 ALR 921.

(3) **Securities.** "Securities" was used in the broad sense and "units of interest" was considered within that term. **Co-partnership**, *State v. Whiteaker*, (1926) 118 Or 656, 247 P 1077; **syndicate**, *Bond v. Coe*, (1928) 124 Or 440, 263 P 924; *Pennicard v. Coe*, (1928) 124 Or 423, 263 P 920.

"Investment contract" was defined as a contract providing for investment of capital in a way intending to secure income or profit from its employment. *Union Land Associates v. Ussher*, (1944) 174 Or 453, 149 P2d 568.

Redeemable stamps purchased by retailers from a foreign corporation and given as a discount on purchases were not securities and were not affected by the Blue Sky Law. *Sperry and Hutchinson Co. v. Hudson*, (1951) 190 Or 458, 226 P2d 501.

FURTHER CITATIONS: *Tarsia v. Nick's Laundry & Linen Supply Co.*, (1965) 239 Or 562, 399 P2d 28; *State v. March*, (1967) 247 Or 266, 428 P2d 894.

ATTY. GEN. OPINIONS: Dealer, broker, etc. construed: Common law syndicate as a "dealer," 1920-22, p 600; club membership solicitor, 1920-22, p 638; corporation organizing security company as agent to sell own stocks, 1922-24, p 491; trust company doing banking business, 1922-24, p 655; company issuing and soliciting contracts to investigate corporations, 1924-26, p 71; issuing own stocks to employes in payment of services, 1924-26, p 272; building and loan association, 1928-30, p 19; escrow agent, 1930-32, p 782; foreign corporation acting as "broker" of securities, 1934-36, p 388; foreign corporation selling securities through an agent as a "dealer" within the meaning of this section, 1948-50, p 455.

Sale, security, etc. construed: Sale of contracts and preorganization receipts in oil and mineral rights as "securities," 1922-24, pp 310, 425, 675, 791; collateral trust notes as a "security," 1924-26, p 633; contracts for services, 1928-28, p 438; contract of sale representing share in profit, 1928-30, p 334; instrument issued by owner to purchaser of mineral rights, 1930-32, p 257; trustee's certificates, 1930-32, p 356; receiver's certificates, 1930-32, p 371; receipts for money borrowed, 1930-32, p 472; appointment of attorney in fact as a "security," 1930-32, p 561; receipts issued by a bondholders' committee, 1930-32, p 589; undivided interest in patent right, 1930-1932, p 683; club memberships, 1932-34, p 73; hospital association coupons, 1932-34, p 92; local currency, 1932-34, p 139; relief scheme stamps, 1932-34, p 499; capital stock represented by voting trust certificates, 1932-34, p 502; speculative investment agreement, 1932-34, p 510; membership in foundation as a "security," 1934-36, p 20; issuance of stock dividend as a "sale," 1934-36, p 12; whether bank reorganization plan involves a "sale," 1934-36, p 43; warehouse receipts, 1934-36, p 165; capital stock of credit union, 1936-38, p 3; corporate notes issued in lieu of dividend, 1936-38, p 124; beneficial ownership certificates issued by trust company, 1936-38, p 230; beneficial interest certificates in investment trust, 1938-40, p 487; undivided interest in real property, 1938-40, p 513; tobacco warehouse receipts, 1938-40, p 559; certain collateral trust notes, 1938-40, p 628; undivided interest in real property together with undivided interest in lease covering same, 1942-44, p 99; green trading stamps as evidence of indebtedness and as securities, 1948-50, p 24; stamps given to customers to stimulate trade as "securities" within the meaning of this section, 1948-50, p 187.

LAW REVIEW CITATIONS: 2 WLJ 478.

59.025

ATTY. GEN. OPINIONS: Stock dividend, 1934-36, p 12; receipts issued in bank reorganization plan, 1934-36, p 43; corporate notes issued in lieu of dividends, 1936-38, p 124; certificates of beneficial interest in investment trust, 1938-40, p 487; collateral trust notes, 1938-40, p 628; sales of securities by nonresident corporations, 1938-40, p 688; transactions involving interstate commerce and use of mails, 1940-42, p 415; exemption of foreign bank securities, 1948-50, p 149.

59.035

NOTES OF DECISIONS

Under former similar statute, the burden of proving an exemption was on the person claiming its benefits. *Koeneke v. B & O Lbr. Co.*, (1960) 224 Or 241, 356 P2d 149; *Tarsia v. Nick's Laundry & Linen Supply Co.*, (1965) 239 Or 562, 399 P2d 28.

A former similar statute permitted at least two sales to two different individuals within a reasonable period of time before there was evidence for determining whether there had been a sufficient violation of the privilege. *Tarsia v. Nick's Laundry & Linen Supply Co.*, (1965) 239 Or 562, 399 P2d 28.

FURTHER CITATIONS: *State v. Swain*, (1934) 147 Or 207, 31 P2d 745, 32 P2d 773, 93 ALR 921; *State v. March*, (1967) 247 Or 266, 428 P2d 894.

ATTY. GEN. OPINIONS: Sale of collateral trust note, 1938-40, p 628; sale of securities by nonresident corporation, 1938-40, p 688.

59.055

NOTES OF DECISIONS

It was not the law, under former similar statute, that sales of unregistered securities were unlawful only when effected by a "public offering." *State v. Simons and Blanchard*, (1951) 193 Or 274, 238 P2d 246.

FURTHER CITATIONS: *State ex rel. Healy v. Consumer Business Sys., Inc.*, (1971) 5 Or App 19, 482 P2d 549.

ATTY. GEN. OPINIONS: Insurance company stock, 1924-26, p 499; issue of authorized capital stock as stock dividend, 1934-36, p 12; corporate notes issued in lieu of dividends, 1934-36, p 124; application to sales by foreign corporation operating in interstate commerce, 1938-40, pp 250, 688; collateral trust notes, 1938-40, p 628; procedure and considerations involved in securing authority to sell corporate stock, 1950-52, p 85.

LAW REVIEW CITATIONS: 7 WLJ 86.

59.065

NOTES OF DECISIONS

Under former similar statute, the bond was not merely to protect purchasers from misrepresentations of value, but also covered any dishonest dealing by the broker. *State v. Francis*, (1936) 152 Or 448, 54 P2d 297; *Hartford Acc. & Indem. Co. v. Ankeny*, (1953) 199 Or 310, 261 P2d 387.

Under former similar statute, only creditors of a broker who had been prejudiced by his fraudulent conduct were within the undertaking of his bond. *Kennedy v. Fid. & Dep. Co.*, (1936) 153 Or 646, 58 P2d 625.

FURTHER CITATIONS: *State v. March*, (1967) 247 Or 266, 428 P2d 894; *State ex rel. Healy v. Consumer Business Sys., Inc.*, (1971) 5 Or App 19, 482 P2d 549.

ATTY. GEN. OPINIONS: Filing of proper bonds, 1932-34, p 378; foreign corporation registering as dealer, 1934-36, p 108; foreign corporation in interstate commerce registering as dealer, 1938-40, p 250; statutory limitation on time to bring action on bond, 1940-42, p 40; applicability of section to dealers and salesmen soliciting orders in this state for acceptance in another state, 1940-42, p 415.

59.085

NOTES OF DECISIONS

Under former similar statute, where the commissioner required registrants to give additional information as he deemed necessary, it was not unreasonable or arbitrary. *State v. Terwilliger*, (1933) 141 Or 372, 11 P2d 552, 16 P2d 651.

FURTHER CITATIONS: *State ex rel. Healy v. Consumer*

Business Sys., Inc., (1971) 5 Or App 19, 482 P2d 549.

59.105

NOTES OF DECISIONS

Under former similar statute suspensions had to be in accordance with the procedure specified. *State v. Charlesworth*, (1933) 141 Or 290, 16 P2d 1116, 17 P2d 1104.

Under former similar statute, the registration of a dealer was properly suspended when the dealer absconded with the purchaser's money. *Hartford Acc. & Indem. Co. v. Ankeny*, (1953) 199 Or 310, 261 P2d 387.

FURTHER CITATIONS: *State v. March*, (1967) 247 Or 266, 428 P2d 896; *State ex rel. Healy v. Consumer Business Sys., Inc.*, (1971) 5 Or App 19, 482 P2d 549.

ATTY. GEN. OPINIONS: Appointment of receiver for a defunct corporate at the instance of the Corporation Commissioner, 1948-1950, p 181.

LAW REVIEW CITATIONS: 7 WLJ 89.

59.115

NOTES OF DECISIONS

1. In general

"Knowledge" of the violation is established by proof that the person knew the security was unregistered. *Spears v. Lawrence Sec., Inc.*, (1965) 239 Or 583, 399 P2d 348; *Moerman v. Zipco, Inc.*, (1970) 430 F2d 362.

Where there is an issue of conduct, evidence of similar conduct may be admissible on that issue if there is such a concurrence of common features that the various acts are naturally explained as caused by a general plan. *Karsun v. Kelley*, (1971) 258 Or 155, 482 P2d 533.

Although an action under this section is not a common-law action for fraud, the primary basis for such an action is fraud. *Id.*

Evidence of false statements by the defendant to other persons may be admissible on the issue of whether defendant had knowledge that a representation was false. *Id.*

Subsection (1) (b) adopts substantially the same terms as the Federal Security Act of 1933, sec. 77 (1) and (2). *Id.*

2. Under former similar statute

"Person making such sale" included a person aiding another in making the sale. *Adamson v. Lang*, (1964) 236 Or 511, 389 P2d 39; *Spears v. Lawrence Sec., Inc.*, (1965) 239 Or 583, 399 P2d 348; *Gonia v. E.I. Hagen Co.*, (1968) 251 Or 1, 443 P2d 634.

The buyer did not need to return worthless securities to rescind the contract and recover payments. *Moe v. Coe*, (1928) 124 Or 436, 263 P 925.

Where the prosecution of the seller was barred by the statute of limitations it did not affect the buyer's right to rescind the contract and recover payments. *Id.*

Although the statutory penalty attached, the buyer could rescind the invalid contract. *Pennicard v. Coe*, (1928) 124 Or 423, 263 P 920.

The remedy provided by the statute was not exclusive and the three-year limitation did not apply to other actions involving securities. *Hartford Acc. & Indem. Co. v. Ankeny*, (1953) 199 Or 310, 261 P2d 387.

Knowledge of nonregistration was not a necessary element of liability. *Gonia v. E.I. Hagen Co.*, (1968) 251 Or 1, 443 P2d 634.

FURTHER CITATIONS: *Salo v. No. Sav. & Loan Assn.*, (1932) 140 Or 351, 12 P2d 765; *Tarsia v. Nick's Laundry &*

Linen Supply Co., (1965) 239 Or 562, 399 P2d 28; *Lamb v. Young*, (1968) 250 Or 228, 441 P2d 616; *Moerman v. Zipco, Inc.*, (1970) 430 F2d 362.

ATTY. GEN. OPINIONS: Filing of proper bonds, 1932-34, p 378; liability of seller of collateral trust notes, 1938-40, p 628; statutory limitation on time to bring action on bond, 1940-1942, p 40.

59.125

NOTES OF DECISIONS

Under former similar statute, where a buyer, on discovering a broker's fraud, promptly notified the seller that he repudiated the transaction, an action for money had and received would lie. *Hyde v. Peirce & Co.*, (1934) 147 Or 5, 31 P2d 755.

59.135

NOTES OF DECISIONS

1. Under former similar statute

The defendant need not have made the sale in person in order to be guilty of the crime described in the statute; it was sufficient if he were the active agent in consummating the transaction by direct control of salesmen. *State v. Keller*, (1933) 143 Or 589, 21 P2d 807.

The gist of the offense was the fraudulent scheme or artifice. *State v. DeGrace*, (1933) 144 Or 159, 22 P2d 896, 90 ALR 232.

The purchaser of stock need not have been actually defrauded to constitute the offense; nor was it essential that the fraudulent scheme be successful. *Id.*

FURTHER CITATIONS: *State v. Keller*, (1933) 143 Or 589, 21 P2d 807.

59.155

ATTY. GEN. OPINIONS: Foreign corporation appointing attorney in fact, 1934-36, p 424.

59.205

ATTY. GEN. OPINIONS: Applicability to transactions with Oregon residents involving interstate commerce or use of mails, 1940-1942, p 415.

59.235

ATTY. GEN. OPINIONS: Record of an examination of a bond and mortgage company as a public record, 1930-32, p 258; procedure to compel production of books and records, 1930-32, p 444.

59.275

CASE CITATIONS: *Koeneke v. B & O Lbr. Co.*, (1960) 224 Or 241, 356 P2d 149.

59.305

LAW REVIEW CITATIONS: 12 OLR 154.

59.325

NOTES OF DECISIONS

Under former similar statute, an application for a permit to sell stock was a public record and admissible in evidence. *State v. Keller*, (1933) 143 Or 589, 21 P2d 807.

59.375

ATTY. GEN. OPINIONS: Statutory limitation on time to bring action on bond, 1940-42, p 40.

59.670

ATTY. GEN. OPINIONS: Whether gratuitous offer of funeral services is within section, 1934-36, p 793.

59.830

LAW REVIEW CITATIONS: 38 OLR 304.

59.991

NOTES OF DECISIONS

1. Under former similar statute

Where the Oregon Securities Law had been violated ad-

missible evidence included. Evidence of sales, State v. Fraser, (1922) 105 Or 589, 209 P 467; absence of permit in records, State v. Whiteaker, (1926) 118 Or 656, 247 P 1077; papers entrusted to bailee by defendant, State v. Barrett, (1927) 121 Or 57, 254 P 198.

Good faith or advice of counsel was not a defense to a sale violating the Oregon Securities Law. Moe v. Coe, (1928) 124 Or 436, 263 P 925; State v. Whiteaker, (1926) 118 Or 656, 247 P 1077.

An indictment charging that defendants engaged in selling and offering securities without a permit or license was a single offense. State v. Gerritson, (1928) 124 Or 525, 265 P 422.

FURTHER CITATIONS: State v. March, (1967) 247 Or 266, 428 P2d 894; State v. Johnson, (1969) 1 Or App 363, 462 P2d 687.

LAW REVIEW CITATIONS: 2 OLR 176; 47 OLR 403-416.