



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS
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ATTORNEY GENERAL

Honorable Sidney Latham
Secretary of State
Austin, Texas

Dear Sir:

Attention: Mr. Horace B. Sessions

Opinion No. O-5946

Re: Can a permit be issued for the sale of the increased capital stock under the same provisions of the law providing for the sale of pre-organization certificates or receipts (Section 7, Article 600a, Vernon's Texas Statutes)?

Your request for an opinion on the above matter has been received and carefully considered. We quote your request as follows:

"The writer is in receipt of the following request involving an interpretation of the Texas Securities Act, particularly Section 7:

"The client of mine, a corporation, desires to increase its capital stock by the issuance of preferred stock of the par value of \$100 per share. Its present capital stock, which will not be changed or disturbed, has a \$10 par value. The proposal is to increase the capital stock by providing for the issuance of \$100 preferred stock, and to sell the \$100 preferred stock at \$300 per share. The privileges attached to the preferred will be such as to make it what my clients believe to be an attractive investment. The proposal is for the stockholders to authorize the increase in the capital stock, and the directors to certify the increase as provided by statute. An application would then be filed with you for a permit to sell this stock under the provisions of the Securities Act, which provides for a pre-organization sale of certificates or receipts.

"Without asking you to pass upon any fact questions involved, as those must necessarily be determined when you have all the facts before you, I would like to know your position as a matter of law on the following:

- "1. Can a permit be issued for the sale of the increased capital stock under the same provisions of the law providing for the sale of preorganization certificates or receipts (Section 7 of Article 600-a- Vernon's Texas Statutes)?
- "2. Is there any legal reason why \$100 par value stock should not be sold at \$300 per share?"

"The writer has been unable to find any opinion rendered by your department or any court decisions bearing on this question, and I, therefore, respectfully request that your office favor us with an opinion in this matter."

Section 7 of Article 600 a reads as follows:

"Sec. 7. In the event any dealer as defined herein shall sell or offer for sale any preorganization certificate or receipts, or shall in any manner solicit subscriptions to or in any proposed corporation, trust or joint stock company proposed to be formed, the Secretary of State may require, if he deems it necessary to protect the interest of prospective subscribers or certificate holders, the dealer so offering such securities for sale to deposit all moneys and funds received from the sale thereof, except such amounts thereof as the Secretary of State may have under this Act allowed as preorganization expenses and commissions for the sale of such security, to be deposited in a trust account in some bank or trust company doing business in the State of Texas, until such time as such proposed company shall have sold the minimum amount of capital to authorize it to begin business in Texas, at which time the bank or trust company shall transfer such funds to the proposed corporation and its executive officers for the purpose of permitting it to undertake its business. In the event such proposed company as herein defined shall fail within two (2) years to sell the minimum amount of capital necessary for the beginning of business in Texas, the bank or trust company shall return to the subscribers that portion of the funds that had been deposited under such preorganization agreement. At the time of making the deposits, as herein provided for, the dealer or issuer shall furnish to such bank or trust company the names of the persons purchasing or subscribing for such securities, and the amount of money paid in by each.

"The total expenses, including organization expenses and all commissions paid to salesmen of any proposed company, as herein defined, shall not exceed twenty (20) per cent of the total amount of capital sought to be employed in such proposed company."

In our opinion, the above quoted law applies only to the sale of preorganization certificates and receipts and subscriptions to or in

proposed corporations, trust or joint stock companies, and that a permit can not be issued for the sale of increased capital stock thereunder. Therefore, question No. 1 is answered in the negative.

Question No. 2 is also answered in the negative, but this holding is qualified by the statement that, in our opinion, the sale of stock for \$300.00 per share the par value of which is only \$100 per share would be subject to The Securities Act (Article 600a).

Trusting that this satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Jas. W. Bassett
Jas. W. Bassett
Assistant

JWB/pw/wc

APPROVED APRIL 5, 1944
s/Geo. P. Blackburn
ACTING ATTORNEY GENERAL
OF TEXAS

Approved Opinion Committee By BWB Chairman