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THE REGULATION OF SECURITIES IN OKLAHOMA

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CHAPTER I

INTRODUCTION

The size and importance of the securities industry in the United States has increased rapidly in recent years to parallel the growth of the American economy. Financing business enterprise through the sale of securities has become increasingly popular with corporations of all types and sizes. Ownership of these securities now embrace increasingly larger and more diverse segments of the general public.

Securities sales on the organized exchanges in the United States during 1964 had a total market value of $75,328,000,000.[1] Stock sales totaling $72,147,000,000 and represented by 2,045,000,000 shares accounted for 95 per cent of the total.[2] Bonds with a par value of

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[1] Statistical Abstract of the United States, 1965, U.S. Department of Commerce, Bureau of the Census, U.S. Government Printing Office, Washington, D.C., p. 471.

[2] The years included were selected because they were typical. The annual dollar amounts indicate the economic significance of the securities industry.

$2,882,000,000 and a market value of $2,641,000,000 accounted for three per cent of the total. All other transactions made up the balance of two per cent. The 1964 sales were an increase of 40 per cent over the 1959 sales of $53,877,000,000. Sales amounting to $22,840,000,000 in 1950 reveal a 136 per cent increase between 1950 and 1959. These figures represent only the secondary markets where outstanding obligations are sold. It should be further noted that these totals do not reflect transactions which occurred outside of the organized exchanges. All of these transactions fall into the category of over-the-counter, and while no record of transactions is kept, it is generally agreed that this market does a bigger business than do the organized exchanges.

New issues of securities in 1964 amounted to $36,628,000,000.[3] Bonds, debentures, and notes in the amount of $33,537,000,000 comprised 91 per cent of the total. Preferred stock made up one per cent of the total with $412,000,000, and common stock with $2,679,000,000 accounted for the remaining eight per cent. The 1960 total of $27,541,000,000 reveals an increase of 33 per cent for the period 1960-1964. With new issues of $26,772,000,000 in 1965, this period showed an increase of 28.65 per cent. The largest increase came between 1940, when $6,654,000,000

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[3] Statistical Abstract of the United States, 1965, p. 471.

was marketed, and 1950, when $19,893,000,000 was placed on the market. This is a ten-year increase of 203.06 per cent. These figures represent the issuance of new securities; sales of outstanding securities are not included.

In addition to having knowledge about the amount of securities offered for sale, information is also available regarding the number of people who own these shares. In 1959, there were 12,490,000 shareholders in the United States.[4] During 1962 there were 17,010,000 shareholders, an increase of 36.19 per cent during the three-year period. This increase, however, was not as great as the 44.73 per cent increase from 8,630,000 shareholders during 1956.

The ages of the 17,010,000 shareholders during 1962 reveal that 2.65 per cent were under 21 years of age, 14.05 per cent were between 21 and 34 years of age, 20.74 per cent were between 35 and 44 years of age, 26.57 per cent were between 45 and 54 years of age, 18.82 per cent were between 55 and 64 years of age, and the rest of them, 18.1 per cent, were over 65 years of age. This record shows that no one age group is really dominant over any other in the ownership of shares.

A comparison of income and the ownership of shares shows very similar results. From this group of 17,010,000 shareholders, 5.9 per cent had an annual income under

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[4] Ibid.

$3,000; 12.18 per cent earned between $3,000 and $5,000; 31.12 per cent earned between $5,000 and $7,500; 23.27 per cent earned $7,500 to $10,000; 19.15 per cent earned between $10,000 and $15,000; 11.88 per cent earned between $15,000 and $25,000; only 6.51 per cent made more than $25,000.

At the state level, $195,000,000 in securities was registered with the Oklahoma Securities Commission during 1964.[5] This compares with the 1963 total of $219,000,000. A decrease of $24,000,000 and 10.96 per cent was realized from 1963 to 1964. The 1963 registrations were only slightly less than the 1962 registrations of $222,000,000.[6] The 1962 figure was considerably in excess of the 1961 figure of $192,000,000. This is an increase of $30,000,000 and a 15.62 per cent increase from 1961 to 1962.

Millions of dollars flow annually into both the primary and secondary markets. Involved are both equity and debt obligations. The distribution of ownership of shares on the basis of age shows that all age groups are included. Distribution on the basis of income shows that all income groups are listed among the shareholders. It

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[5] Fifth Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Legislature, 1964.

[6] Third Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Legislature, 1962.

is obvious that the securities business is "touched with the public interest" since a large segment of the population of the United States is affected.

Purpose and Scope

The purpose of this research is the tracing of the development of securities regulation in Oklahoma by studying current regulatory procedures and making recommendations for possible improvement. Some of the topics which the research will cover are: the statutes which have been used to regulate securities in Oklahoma in the past; the factors which brought about the changes in the statutes by the various legislatures; the degree of efficiency in securities regulation in Oklahoma; possible changes which might improve the efficiency of securities regulation in Oklahoma.

Procedure

Prior to this study of securities regulation, a brief history of the development of the corporation in this country is undertaken. This summary considers both its European origin and its early days in this country.

A thorough understanding of the Oklahoma law dictates that consideration be given to the background of securities regulation in the United States. The early attempts at federal regulation, state Blue Sky Laws, and conflicts in state-federal regulations are examined.

An examination of the Oklahoma statutes is made to see how the development of securities regulations within the state has occurred. Beginning with territorial legislation of 1890, the changes of each legislative session through the 1965 session are considered.

A study of the Selected Investments case is undertaken as an illustration of the weaknesses of the 1951 law, or the laxity in administration, or both.

The current statute, passed by the 1959 legislature, is analyzed in some detail since it is the current statute under which the Commission is operating.

The functions of the office of the State Securities Commissioner are presented in detail. An analysis of the registration procedure for securities, brokers, dealers, and agents is combined with a study of the methods of regulating the issue of securities in Oklahoma. Conclusions are recommendations for more effective regulation.

Limitations

This study does not include the statutes of states other than Oklahoma with respect to the regulation of the securities industry. No attempt is made to compare Oklahoma regulatory provisions or procedures with any other governmental body.

CHAPTER II

BACKGROUND OF SECURITIES REGULATION

Corporate Development in this Country

The development of securities regulation in this country is very closely aligned with the development of the corporation. The parallel growth of the two is logical since the development of large corporations involves the public distribution of securities. Thus, an understanding of the origin and history of the corporation will facilitate the study of securities regulation.

Influence of England

The corporate form in the United States has its origin in English law. The English, however, were not the originators of the corporation. There are at least three schools of thought concerning the origin of the corporation.[1]

The first school of thought holds that there is validity in the concept of collective entity preceding that of the individual. It holds that men were bound by blood

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[1] William Meade Fletcher, Cyclopedia of the Law of Private Corporations (Chicago: Callaghan and Company, 1917), Vol. I, p. 2.

relationships into clans, tribes or families and these relationships were units of primitive society even before the concept of the individual was considered. Thus, they see the corporation as merely a manifestation of an instinct which man has always possessed. The law has merely given recognition to this phase of human endeavor.

The second school of thought maintains that the corporate form can be traced to Greece of Solon (638 - 559 B.C.). It takes the evidence from the writings of Gaius on the Roman law and from the Pandects of Justinian. These two sources show that Greece of Solon wrote the statutes which permitted the formation of private corporations. The purposes for which these corporations could be formed were stated and very limited.

The third school of thought is attributable to Blackstone who maintained that the corporation was brought into being because of the political necessities of Numa Pompilius (715 - 672 B.C.). He used this for an organization to separate warring factions after he came to rule the Roman Empire. He broke up large factions into smaller ones by setting up separate societies for each manual trade and profession.

Although the exact origin of the corporation is lost in antiquity, the contention of Blackstone concerning the origin of the corporation is the most widely accepted version.

This is not an acceptable explanation of how the corporate form spanned the ages between Roman times and England immediately prior to the Norman Conquest.[2] The corporate idea seems to have arisen in England independently in connection with religious and municipal life.

The ownership of land, prior to this time, was a right or privilege granted by some sovereign power to an individual. As England went from gemeinschaften to gesellschaften, it soon became apparent that no one person would be the owner of the borough.[3] Likewise, as the church ministered to larger and more diverse groups, it soon became apparent that no one individual owned the church. The feeling soon developed that two institutions were collectively owned by everyone. These two institutions, the borough and the church, soon began to feel their own strength and importance. The boroughs wanted and needed special privileges, and more importantly, were in a position to obtain them from the king. Specifically granted to a borough by the sovereign, in granting it a charter, were these franchises: the right to hold its own court; the right to its own customs; and, freedom from toll.[4]

The evolutionary nature of the churches in receiving

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[2] Ibid., p. 6.

[3] Robert L. Raymond, "The Genesis of the Corporation," Harvard Law Review, Vol. XIX, No. 5(March, 1906), p. 335.

[4] Ibid.

corporate charters is very similar to that of the boroughs.

The large trading companies did not come into existence until the middle of the 17th century,[5] many years after the practice of issuing charters came into being in England. The Hudson Bay Company, only one of the many trading companies, most closely approximates the large corporation of modern times.[6]

The English sovereign, also used the granting of corporate charters to settle America, seeking a solution to several problems at one time. England could establish the colonies to serve as markets for the goods they produced, a source of raw materials for England, and a place to send some of the more undesirable citizens of England.

The charter for Virginia was issued in 1606 by James I and the first settlement came in 1607. The Plymouth Company was chartered in 1620 and was settled in 1630. The Massachusetts Bay Company was chartered in 1629 and the colony was founded in 1630. The Georgia Company was chartered in 1732 and the colony was settled in 1733. All of these colonies received their charters from the ruling English sovereign.

When we realize that the corporate form had reached maturity in English law during the colonial period in

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[5]Fletcher, op. cit., p. 6.

[6]John P. Davis, Corporations (New York: Capricorn Books, 1961), pp. 157-209.

America, it is not surprising that it has played such a large part in American life. One authority had this to say about English corporations: "The whole advance of English discovery, commerce and colonization in the sixteenth and early seventeenth centuries was due, not to individuals, but to the effect of corporate bodies."[7]

Early Corporate Charters

The influence of the English and the close ties between the colonies and England are apparent from the chartering of the first corporations in this country. The early corporate charters granted in this country were for boroughs and religious institutions. The first charter was granted to the borough of Acomenticus in Maine by Sir Ferdinand Gorges in 1641. In part the charter said:

> The planters and inhabitants of Acomenticus . . . ordained into one bodie politique and corporate . . . . To the mayor and alderman was given peower not only to hold courts, build fortifications, etc., but to make and execute such by lawes orders and ordinances as are accustomed to be made in townes corporate in England, and should be wholesome and necessary and constant into the lawes orders and ordinances used in England.[8]

The second American community to receive a corporate charter was New York. The charter was granted in 1650 by the Dutch governor.

There were three other municipal charters issued

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[7]Joseph Stancliffe Davis, Essays on the Earlier Histories of American Corporations, Vol. I (Cambridge: Harvard University Press, 1917), p. 4.

[8]Ibid., p. 50.

during the seventeenth century, one in Maryland and two in Pennsylvania.[9] Before the revolution in 1776, more than fourteen more charters had been granted in the colonies.[10]

The Virginia House of Burgesses in 1705 directed the governor of Virginia to grant a charter to Williamsburg.[11] Resenting this intrusion into what he considered his domain, the governor was reticent to follow the directive of the legislature. The governor finally issued the charter in 1772.

The colonies chartered some private as well as public corporations during this colonial period. Other than the municipalities, two other types of public corporations were established during the colonial days. The two types were either educational or charitable institutions.[12] The most common types of private corporations were those of a religious nature.[13] The first charter of a religious nature was issued in New York to the "Ministers Elders and Deacons of the Dutch Protestant Congregation in the City of New York."[14] Churches were freely chartered during the eighteenth century.

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[9] Ibid., p. 53.

[10] Ibid., p. 54.

[11] Ibid., p. 59.

[12] Ibid., p. 72.

[13] Ibid., p. 75.

[14] Ibid., p. 76.

By the time of the American Revolution, nine charters had been issued for colleges. Some were colonial charters, while others were chartered in England.[15] Harvard received its charter from Massachusetts in 1650. William and Mary was established with a royal charter in 1693. Yale, Princeton, The University of Pennsylvania and Brown University were some other schools which came into existence at this time.[16]

Business corporations chartered and operated in the colonies at the time of the revolution were few and of little importance.[17] There were only six corporations included in this category. These six corporations and the order of their appearance were: (1) The New York Company, "for settling a fishery in these parts", 1675; (2) The Free Society of Traders, in Pennsylvania, in 1682; (3) The New London Society United for Trade and Commerce in Connecticut, 1732; (4) The Union Wharf Company in New Haven, 1760; (5) The Philadelphia Contributorship for the Insuring of Houses from Loss by Fire, 1768; (6) The Proprietors of Boston Pier, on the Long Wharf in the Town of Boston, in New England, 1772.

The most significant of the colonial corporations was the mutual insurance company founded in Philadelphia.

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[15] Ibid., p. 83.

[16] Ibid., p. 85.

[17] Ibid., p. 87.

It continues to exist today.

This observation has been made concerning corporations during colonial times:

> It would seem, therefore, that the development of corporations in the colonies was a fairly normal one, not appreciably hampered by crown interference or parliamentary restrictions, and checked chiefly by the simplicity of social and economic traditions.[18]

The first business corporation owing its franchise to American sovereignty came into existence near the end of the War of the Revolution.[19] The Continental Congress chartered the Bank of North America in 1781. The charter was granted to the first bank as "The President, Directors, and Company of the Bank of North America." The bank was formed out of necessity. Continental currency had shrunk to a value of two cents on the dollar and the chartering of the bank was a temporary and expedient measure.

Statehood under the confederation produced twenty business corporations and the confederation itself produced the previously mentioned bank before 1789. After 1789 and the ratification of the constitution, a total of 200 business corporations came into existence during the next eleven years, or prior to 1800.[20]

As in England, the first corporation in this country

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[18] Ibid., p. 107.

[19] S. E. Baldwin, "American Business Corporations Before 1789," American Historical Review, Vol. VIII, p. 458.

[20] Ibid.

was chartered by the various state legislatures. This privilege of granting charters, long recognized as an attribute of sovereignty, was taken over by the state legislatures as soon as British control was overthrown. This authority was held by legislatures until such time as general incorporation statutes were written by the states. As late as 1948, the states of Connecticut, Massachusetts, New Hampshire and Rhode Island did not have general statutes for the issuance of corporate charters.[21]

The first state to establish general incorporation statutes was New York in 1811.[22] However, only certain types of corporations were covered and other corporate charters were granted by the legislature. In 1811, a total of 55 corporate charters were granted in New York, with 12 being granted under the general provisions of the law and 43 being chartered by special acts of the legislature.[23] The first state to pass a statute covering all types of corporations and the granting of corporate charters was Louisiana on November 5, 1845. The states of Iowa and New York followed, approximately one year later, in 1846, with their general incorporation statutes. During the next

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[21]George Heberton Evans, Jr., Business Incorporation in the United States 1800-1943 (New York: National Bureau of Economic Research, Inc., 1948), p. 11.

[22]Guthmann and Dougall, Corporate Financial Policy (3d ed.; Englewood Cliffs, N.J.: Prentice-Hall, Inc.), p. 43.

[23]Evans, op. cit., p. 12.

fifteen-year period, or by 1860, a total of 13 states had established general provision statutes. The original three had been joined by Illinois, Wisconsin, California, Michigan, Maryland, Ohio, Indiana, Minnesota, Oregon and Kansas. Only five states waited for the twentieth century to establish their general incorporation provisions. These states were Virginia, Oklahoma, New Mexico, Arizona, and Vermont. The statutes of Oklahoma, New Mexico and Arizona became effective when they were admitted to the Union. Vermont, in 1931, was the last state to adopt general incorporation statutes.

Corporate Form after Civil War

Although the corporate form of business had been used for some time in the 1860's, it was after the Civil War that it began its rise in importance in the United States. During the latter part of the nineteenth century, the United States experienced something of an industrial revolution. This period of time witnessed the virtual completion of the railroad network in this country. During this era, several key inventions drastically affecting this country, were on the market. Included were the reaper, the cotton gin, the Bessemer steel process and many others.

An expanding population and the growth of the big cities provided mass markets for the goods produced. All of these factors, the new inventions and the railroad system,

provided the means of producing and distributing, on a large scale, the products to satisfy the expanding markets.

To take advantage of economies of large scale production, large sums of money were needed. This need generally meant that the savings of a large number of people had to be secured. Both debt and equity obligations were used in the process of securing the needed funds to finance these expanding fields. Thus, the securities business very closely paralleled the growth of the corporation.

Basis for Today's Law

The initial issuance of securities, in primary markets, meant that trading of the securities among individuals, or the secondary markets would inevitably follow. The exchanges, as we know them today, started as a confederation of men who gathered in the coffee houses to speculate in securities.

The first "rules" for the operation of a security exchange were contained in an agreement entered into in 1817 by members of what later became the New York Exchange.[24] The volume of trading and activity on the exchange followed very closely the business cycle until the period just after the Civil War.

Most of the present-day regulations can be traced,

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[24]George L. Leffler, The Stock Market (2d ed. New York: The Ronald Press, 1957), p. 94.

to activities which took place on the exchanges between the Civil War and 1900. These activities were, however, perfectly in line with the philosophy of that era.

> During the period from 1860 to 1900, some of the greatest manipulations in the history of the stock market took place. . . . Giving no quarter to their opponents, and asking none, they fought for fortune in the market with every weapon at their command. The only law they knew was the law of the jungle; their ethics, however, unsavory thought they may appear today, were the ethics of their day.[25]

The most common type of manipulative practices engaged in during this era of amassing fortunes were pools and wash sales.

One authority has defined a pool as: "A temporary association of two or more individuals to act jointly in a security operation of a manipulated character."[26]

The number of people involved in a pool would vary depending on the size of the intended operation and the particular people involved. The people in the pool would gather a large number of shares in a particular stock. The prerequisites to the operation of the pool were a situation in which the market was able to make a substantial advance, and the company's position must be suitable because of good earnings, increased dividends or new developments within the company. The pool would create activity in the stock through artificial market activity. This was followed

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[25]Ibid., p. 100.

[26]Ibid., p. 338.

by a steady stream of glowing publicity to effect or to create favorable public interest. The increased activity, plus the favorable public interest, would make the stock a speculative favorite, thus driving up the price of the stock. The pool would then unload its supply of stock at a favorable price and yet not ruin the market by driving the price of the stock down. After the stock was no longer artificially supported, the market in its shares would collapse.

The oldest form of stock manipulation was the wash sale. The wash sale is actually a fake sale in which no real change of ownership takes place.[27] The fake sale would be accomplished between two brokers, two friends, a man and his wife, or by one man who buys and sells shares at the same time with different brokers. The primary purpose of a wash sale was the establishment of a fictitious price, either to establish a loss for tax purposes or to create a profit opportunity.

These manipulative practices were used on the exchange in the latter part of the nineteenth century to amass fortunes. The honest and unsuspecting investor could never be sure when and with what stocks these manipulative practices were being used on the exchange.

The end of the nineteenth century was marked, also, by the appearance of large industrial combinations on the

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[27] Ibid., p. 331.

American scene. These combinations caused a great deal of speculation in their securities. The annual volume of stock traded rose from 56 million shares in 1896 to 265 million shares in 1901. Bond volume increased from $394 million to $1 billion in the same period.[28]

Securities Regulation in the United States

The first attempts at securities regulation were isolated instances relating to a specific issue of securities. It was several years before a statute relating to the overall regulation of securities was passed. Reflected in the earlier attempts at regulation are experiences gained in attempting to curb some of the more pronounced abuses of the investor.

Early Federal Regulation

The securities industry, being such an integral part of big business, adopted the philosophy of the business community which reflected the tenor of the times, which was *caveat emptor*. So long as *caveat emptor* prevailed, the securities investor was subjected to undue risks and unfair practices in both new and existing issues.[29]

Early attempts at federal regulation were centered

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[28] *Ibid.*, p. 103.

[29] Douglas H. Bellemore, *Investments, Principles, Practices, and Analysis* (New York: Simmons-Boardman Publishing Co., 1962), p. 270.

in specialized fields. The Mail Fraud Act of 1909 was one of the first in the area of security regulation. This act made it a violation to use the mail for fraudulent purposes. The act stated:

> Whoever, having devised or intending to devise any means of false or fraudulent pretenses, representatives, or promises, or to sell, dispose of, or furnish, or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or any state, territory, municipality, company, corporation, or person. . . place or cause to be placed any letter, postal car, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within, or outside the United States . . . shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.[30]

The statute appears to have been written primarily to cover the counterfeiting of money and the addition of corporate securities appeared to be something of an afterthought.

Another early attempt at federal regulation was the Transportation Act of 1920.[31] This was an act to regulate the issue of securities by transportation concerns. The Transportation Act of 1920 was an amendment to the Interstate Commerce Act passed on February 4, 1887. Section 439 of the Transportation Act of 1920 was an amendment of Section 30 of

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[30] Public Laws of the United States of America Passed by the 60th Congress 1907-1909. Washington, D.C.: Government Printing Office, 1909, chap. 321, sec. 215, pp. 1130-31.

[31] U.S., Congress, Statutes of the United States of America, 66th Congress, 2nd Sess., 1919-1920 (Washington: U.S. Government Printing Office, 1920), chap. 91.

the original act. Section 439 deals with the issuance of securities by railroad companies. The section states:

> It shall be unlawful for any carrier to issue any share of capital stock or any bond on other evidence of interest in or indebtedness of the carrier . . . unless, and until, and then only to the extent that, upon application by the carrier, and after investigation by the commission of the purposes the commission by order authorizes such issue.

The conditions under which the commission could approve the issue for sale were specifically set out in the statute. Approval was given if: the issue was for some lawful purpose within the corporate charter; the issue was compatible with the public interest, which is necessary and appropriate for the proper service to the public; the issue was reasonable and appropriate.

An unusual aspect of this statute was the commission could grant or deny the request, grant any part of it, or modify it in any way it so desired.

Specifically exempt from the provisions of this statute were debt obligations with maturities of less than two years.

These two statutes represent the earlier attempts to regulate securities at the federal level.

Need for Regulation

Continued manipulative practices, excessive abuse, and fraudulent schemes involving the investor eventually led to the regulation of the securities. Several factors best

illustrate why some control provisions were essential.[32]

Although it was rather obvious that market conditions were directly affecting the welfare of millions of people, the exchanges were left to police the activities of their own members. Although the internal regulations were partially effective, there are several reasons why they did not remove the need for some outside control.[33] These reasons are: (1) conflicts of interest existed between the exchange, its members, and their customers; (2) the exchanges had become an integral part of the credit and financial structure of our system; (3) the abuses of non-exchange members could not be contained; (4) there was a sharp distinction between the exchange authorities and public officials regarding the public welfare in financial matters.

The fact soon became obvious that the exchange could not effectively control its own operations.

As has been previously stated, the idea of caveat emptor was no longer the prevalent concept of the business philosophy. The prices determined in the open market should reflect the supply and demand situation. If the judgment of any parties involved in the transaction is influenced by false, incomplete, or inaccurate information, the price

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[32] Fundamentals of Investment Banking, sponsored by Investment Bankers Association of America (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1949), p. 608.

[33] Ibid.

agreed upon in the market does not reflect the supply and demand situation. One of the essential ingredients for a free and open market is that the buyer and seller arrive at a price using all the pertinent information available to them with respect to a given situation. Anything less than this unduly and arbitrarily influences agreed-upon prices. One highlight of this problem was the inadequate control over listed and unlisted securities traded on the exchange.

Included within the context of insiders are brokers, dealers, corporate officials and other persons with information not available to the general public. The abuses perpetrated by this group of people were not in the best interest of the investing public. Brokers and dealers were quite often in a very compromising situation, acting both for themselves and for their clients. The selfish use of confidential information, not available to everyone, was prevalent.

The use of the wash sales and pools to influence prices was not in violation of exchange rules. As previously discussed, these practices permitted the unscrupulous manipulators to create artificial supply and demand for a stock in order to affect the price.

The primary markets, where sales of new security issues are originated, also served as a good example of the need for regulation. One of the more prevalent practices was the concealment of material facts within the sales

literature or offering circular.[34] This practice was extended to the actual issuance of false information in some cases. The victims of these schemes had very little or no recourse, outside the civil law, against the issuer of the securities. This state of affairs was compounded by the lack of an effective regulatory agency at any level to control the activities of the people.

Early State "Blue Sky" Laws

The passage of early federal legislation in the areas of securities regulation was accompanied by state legislation. The legislatures of the various states began to take steps to protect the individual investor. The first two states to pass "Blue Sky Laws" were Kansas and Rhode Island in 1911. At the present time every state except Hawaii and Nevada has some type of regulatory law.[35] The only recourse available to exploited investors, prior to the passage of state laws, were the anti-fraud statutes and the common law.[36]

As the various states pass statutes, each has taken a different approach to the problem of regulation. Therefore, the laws are different in each state. This factor places an unusual burden upon those individuals wishing to

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[34] Ibid., p. 576.

[35] Gordon Calvert, "Development in State Regulation of Securities," Business Lawyer, Vol. XVII, July 1962, p. 829.

[36] Bellmore, op. cit., p. 282.

register in several states. This lack of uniformity has partially hamstrung and spotlighted the ineffectiveness of the state statutes. There has been a movement to obtain passage of a Uniform Securities Act in the various states to alleviate some of the inadequacies resulting from different statutes. At the present time, fifteen of the states, including Oklahoma, have adopted the Uniform Securities Act. The Uniform Securities Act will be discussed in Chapter IV.

Basic Types of States' Laws

The statutes enacted by the various state legislatures were quite different in content, nature and scope. However, the regulatory attempts the various states made can, in general, be divided into three main classifications.[37] These classifications are: (1) laws requiring the registration or licensing of dealers, brokers and other distributors; (2) laws requiring the registration of new securities issues; (3) anti-fraud type laws which provide a penalty for the fraudulent sale of securities.

States which regulate sales of an issue by licensing the dealer, obtain information before granting a license to assure that the dealer is solvent. He can be located and watched if he is believed to be engaged in questionable activities. Some states require registration annually to

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[37] Fundamentals of Investment Banking, op. cit., p. 608.

provide information of home-office addresses, branch offices, names of principles doing business for the broker-dealer firm, and persons who are acting as salesmen. The data are intended to establish past history, general integrity and financial honesty. If the licensing authority finds the applicant is of good character and has paid the proper fee, it licenses him.

States using the registration of securities as their regulatory technique have their requirements satisfied in one of three ways, i.e., notification, coordination or qualification. Under the notification provisions, the statute requires the filing of intent to offer securities by the issuer or the dealers desiring to distribute them within the state. Coordination allows the registrant to register with the Securities and Exchange Commission and the state authority at the same time. Approval by the state is concomitant with federal approval. Under the qualification requirement, the proper state authority examines applications for the sale of securities and approves those issues which qualify. The tests applied by the various state authorities in passing on qualifications vary according to the statutes of that particular state and the discriminatory power given the authorizing body.

A state, which has only a law against fraud, refuses to intervene in the issuance of any securities unless it should appear that fraud is about to be committed. Such

a law usually required that the dealer in securities file a list of his personnel with the proper state agency and provide the name and addresses of the issuer when he offers a new issue for sale. It then becomes the responsibility of the proper state officer, usually the attorney-general, to investigate if he believes that the dealer has engaged in fraudulent practices, or is about to engage in them. This type of legislation does not protect the investor either from receiving inadequate facts, or from an inadequate investigation of the issue before he purchases the stock.

Federal Regulatory Statutes

Unfortunately, legislative action by the individual states proved inadequate to protect the public against the abuses and frauds arising in the issuance and sale of new securities. The tremendous amount of estimated losses during the 1920's in worthless securities[38] was little reduced by the existence of blue-sky laws in almost every state in the Union. The state laws were easily circumvented. The most common method was the consummation of a sale across state lines. The complex interstate character of most corporate financing meant that the blue-sky promoter could obtain almost completely immunity from state laws by transferring his operation to interstate commerce. Both practical

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[38]The total has been estimated at $25,000,000,000. See the New York Times, May 28, 1933, p. 2.

and constitutional limitations prevented effective state actions in cases of this type.

The above situation led, of course, to eventual federal legislation in this area. The two landmark pieces of federal legislation are The Securities Act of 1933 and The Securities and Exchange Act of 1934.

The Securities Act of 1933 was passed to regulate the offering of securities in the primary market. Passed on May 27, 1933, the act was designated to "provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails."[39] The statute, therefore, is classified as a full disclosure act designed to provide the potential investor with all the material facts pertinent to a given issue so that an intelligent decision regarding investing can be made. The heart of the Securities Act of 1933 is the registration statement required to be filed with The Securities and Exchange Commission for all issues registered by qualification. The information contained in the registration statement can be placed in five major groups:[40]

1. Historic and legal facts concerning the nature of the business, the articles of incorporation, the bylaws,

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[39] Gilbert W. Cooke, The Stock Markets (New York: Simmons-Boardman Publishing Company, 1964), p. 103.

[40] Securities and Exchange Act of 1933, in U.S., Title 15, sec. 77a-77aa (Washington: U.S. Government Printing Office, 1965), pp. 2689-2724.

annual reports over a period of years, and any significant action taken by the board of directors;

2. Information relating to the nature of the issue, the capitalization of the issuer, the actions taken to make the issue a legal security, and the opinion of competent counsel passing on the legality of the issue;

3. Specific financial information and detailed accounting exhibits on the items in the profit and loss statement and balance sheet statement which provide full disclosure on all accounting variations;

4. Contracts relating to the conduct of the business and the use of the net proceeds from the sale of the issue, including any management contracts, royalty contracts, or agreements with subsidiaries;

5. All facts relating to the underwriting;

The Securities Act of 1933, also, requires that each investor be provided with a copy of the prospectus at the time of, or prior to, the sale of the security. The prospectus, according to the statute, must contain all the information in the registration statement except legal opinions of counsel, underwriting agreement, articles of incorporation and indentures. The prospectus is the instrument by which the full disclosure of facts is accomplished.[41]

The following securities are exempt from the

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[41] Ibid., sec. 77j, p. 2654.

provisions of the Securities Act of 1933:[42]

1. Securities issued or guaranteed by the United States, any state, or political subdivision thereof, or any national bank;

2. Any note, draft, bill of exchange or bankers acceptance with less than nine months maturity;

3. Securities of non-profit corporations;

4. Securities of building and loan or savings and loan associations, etc., where business is making loans to members, if the issuer does not make more than a three per cent fee;

5. Issues of common carriers controlled by the Interstate Commerce Commission;

6. Certificates issued by a receiver or trustee in bankruptcy;

7. Transactions between issuer and existing holder where no fee is paid;

8. Insurance contracts subject to supervision by the state commissioners;

9. Securities issued for outstanding securities where approved by any court, or bank, or insurance commissioner;

10. Securities sold solely intrastate;

11. Offerings of less than $300.00.

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[42] Ibid., sec. 77c, p. 2648.

The only other exemptions provided by the Securities Act of 1933 were of a transaction nature. The transactions specifically exempted from the provisions of the act were:[43]

1. Transactions by any person other than an issuer, underwriter or dealer;

2. Private placement of an issue;

3. Transactions executed by a broker for a customer order in the open market or any exchange;

4. Transactions by a dealer, except any sales made within forty days after an issue is first sold.

Any securities involved in transactions other than the four specific exemptions listed above, and excluding securities previously listed as being exempt, must register with the Securities and Exchange Commission in compliance with the Securities Act of 1933.

The Securities and Exchange Act of 1934 was designed to regulate transactions in the secondary markets involving exchanges. This act brought the operation of securities exchanges under federal statute "to insure the maintenance of fair and honest markets in such transactions."[44]

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[43]Ibid., sec. 77d, p. 2650.

[44]Securities and Exchange Act of 1934, in U.S., Title 15, chap. 2B, sec. 78a-78jj (Washington: U.S. Government Printing Office, 1964).

The main objectives of the act are:[45]

1. To provide the public with reliable information concerning the securities that are listed on national security exchanges;

2. To eliminate manipulation, fraud, and the dissemination of false information in the securities markets;

3. To insure just and equitable trading in the security markets;

4. To regulate trading by insiders in the security markets;

5. To regulate the use of credit for the purpose of security trading;

6. To regulate the use of proxies by corporate officials.

The Securities and Exchange Commission administers both of these federal statutes. The Commission has the authority and the responsibility to make the information necessary for security analysis available to the investor, thus allowing him to determine the desirability of investment in a particular issue.

State-Federal Regulations

As in most cases where there is an overlapping of both state and federal statutes, some questions arise as to

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[45] Securities and Exchange Commission: Its Function and Activities, Securities and Exchange Commission (Washington: U.S. Government Printing Office, 1964), pp. 5-8.

the propriety of having two sets of laws. The area of securities is much like all other areas where there is an overlapping of responsibilities and jurisdictions. There are those who believe there is a duplication of effort to have regulatory bodies at both the state and federal levels; however, most people associated with the securities industry over the past twenty-five years have come to regard the federal regulation of interstate securities as both necessary and proper.[46]

Some people maintain that the laws of the individual states are superior to those of the federal government. These individuals contend that: (1) the Blue Sky laws considerably antedate the corresponding federal legislation; (2) Congress specifically reserved to the respective states their power to regulate intrastate securities activities; (3) by and large, the Blue Sky laws are broader in scope than the corresponding federal legislation, both as to coverage and intensity.[47]

They further maintain that the Act of 1933 promises only a full disclosure of facts whereas the Blue Sky laws establish certain minimum qualitative standards which must be met before an issuer can put the securities on the market. The philosophy behind the typical Blue Sky law, with respect

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[46]Edward M. Cowett, "Federal-State Relationships in Securities Regulation," George Washington Law Review, vol. XXVIII (October 1959), pp. 287-305.

[47]Ibid., p. 289.

to the registration of securities, goes much further than the disclosure philosophy underlying the Securities Act of 1933.[48]

Securities and Exchange Commissioner Hugh Owens has said that there is no conflict between state and federal statute in regulations. He emphasized, however, that a different philosophy underlies the statutes at the two levels.[49]

The proponents of the philosophy to return to the Blue Sky laws and eliminate or minimize federal regulation in this area have not come to grips with the problem which caused the passage of the original federal statutes. The problem of interstate handling of securities transactions in our more complex society today would be overwhelming without federal regulation.

The various regulatory bodies, whether state or federal, should not be considered in competition with each other, rather they should have a role of complementarity. Only through cooperation of the various agencies will a regulatory procedure be adequate to restrain those who defraud the unsuspecting investor.

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[48] Ibid., p. 292.

[49] Interview with Hugh Owens, Commissioner, Securities and Exchange Commission, May 14, 1965.

CHAPTER III

EVOLUTION OF OKLAHOMA LAW

Regulation Prior to 1919

The first attempt at state regulation of securities in Oklahoma came in 1919. Prior to that time, the only regulatory provisions to be found were included in various sections of the territorial and state laws. The territorial laws of Oklahoma were taken from the statutes of New York, Ohio, Nebraska, Kansas and South Dakota. The incorporation statute was taken from the state of South Dakota.

The first session of the Oklahoma Territorial Legislature convened on August 27, 1890, in Guthrie, Oklahoma.[1] The first legislature, although a hectic one, did manage to pass a body of statutes regulating life within the territory. Among the statutes passed by the first legislature was one pertaining to corporations.[2] It was concerned with their creation, existence, powers, securities,

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[1]Statutes of Oklahoma, 1890 (Oklahoma City: The State Capitol Printing Company, 1891), p. v.

[2]Ibid., chap. 18, arts. 1-20.

etc. The first section of the incorporation statute deals with the general provisions relating to all corporations. Later sections deal with the incorporation of specific companies such as railroads, insurance corporations, mining and manufacturing, building and loan associations, banking and other loan corporations, etc.

Corporations of two types, public and private, were permitted under the statute.[3] Public corporations were to be formed for the government of the territory and regulated by local statutes. Private corporations could be formed for mining, manufacturing and other industrial pursuits, construction and operation of railroads, wagon roads, irrigation ditches, colleges, seminaries, churches, libraries, benevolent, charitable and scientific associations, insurance corporations and banks.

After securing the certificate of incorporation from the secretary of the territory, the directors were required to open books of subscription to any unsubscribed capital stock.[4] They were further ordered to secure subscriptions to the full amount of the "fixed capital." After the initial issue of the shares, they became the personal property of the security owner and could be transferred by endorsement and delivery. The legality

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[3] Ibid., art. I, sec. 7.

[4] Ibid., art. I, sec. 2.

of this transaction extended only to the two people involved, however, until such time as the corporation was notified of the names of the parties, the number of shares, and the date of the transaction involved. This information could then be entered on the books of the corporation.[5] Dividend payments could be made only from surplus profit and no part of the capital stock could be withdrawn or divided by the stockholders. The capital stock of a building and loan association could not exceed $500,000 and could be issued in one or more successive issues.[6]

The general incorporation statutes of the Oklahoma Territory remained substantially unchanged until the 1897 session of the Territorial Legislature. During this session, the statute regulating the establishment of banks was withdrawn from the general incorporation statute and placed in a separate statute. The act as written related specifically to the chartering of banks, reserve requirements, capital requirements, capital stock, number of incorporators, etc.[7]

The next few sessions of the legislature made very few and minor changes in the statutes with regard to

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[5]Ibid., art. II, sec. 4.

[6]Ibid., art. XVI, sec. 2.

[7]Session Laws of 1897 (Guthrie, Oklahoma: Leader Publishing Company, 1897), chap. IV.

securities. It was not until the 1919 session met that Oklahoma made its first statute specifically regulating securities.

Blue Sky Law of 1919

The "Blue Sky Law of 1919" as the Legislature officially entitled it, was briefly described as "An act to prevent unfairness, imposition, or fraud, in the sale of certain securities."[8] This protection was to be accomplished by the registration of both securities and dealers.

Distinction Between Security and Speculative Security

The Legislature, within this act, attempted to define and distinguish between "securities" and "speculative securities."[9] Securities were taken to mean stock certificates, shares, bonds, debentures, certificates of participation, membership contracts, contracts or bonds for sale and conveyance of land on deferred payment or installment plans, and other instruments of the same type, including the capital stock of any and all corporations offered for sale. Speculative securities within the meaning of the Blue Sky Law of 1919 were taken to mean and include:

1. All securities sold or promoted with the promise of unusual profit, gain or advantage in the

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[8]Session Laws of 1919 (Oklahoma City: Harlow Publishing Company, 1919), pp. 77-85.

[9]Ibid., chap. XXXXIX, sec. 1.

ordinary course of legitimate business;

2. Any security where the sales or profit commission was greater than ten per cent;

3. Any security where the element of chance or hazard of speculative profit or possible loss equals or predominates the element of reasonable certainty, safety and investment;

4. Any security where the value materially depends upon proposed or promised future promotion or development rather than on present tangible assets and conditions;

5. The securities of any organization, which has included or proposed to include as a material part of its assets, patents, formula, good will, promotion or intangible assets;

6. Securities issued in promotion of any enterprise or scheme for the sale of unimproved or undeveloped land on any deferred payment plan, when the land is outside Oklahoma, and the value of the security depends on a future performance of any stipulation, such as irrigation or transportation facilities.

The distinction drawn between the two types of securities rests mainly in the areas of unusual return on investment, risk and/or future development. Certain portions of this section, as will be shown later, were declared unconstitutional.

Establishment of State Issues Commission

The Blue Sky Law of 1919 established for the first time a specific agency of the state government which was charged with the task of regulating the issuance of securities in the primary markets. The enforcement of this first securities act was placed in the hands of the State Issues Commission.[10] The members of this Commission were the state banking commissioner, who was the chairman, the secretary of state and the state auditor. The only personnel authorized the Commission was one secretary.

The main duty of the Commission was the examination of statements and documents required by the act.[11] If the State Issues Commission decided that the sale of the securities would be fairly and honestly conducted, a permit to sell the securities was granted. The granting of the permit to sell the securities required that subscription lists and contracts of the issuing corporation have on the front, in bold type, the amount of the commission, promotion fees, and other estimated expenses in connection with the sale as well as the interest which the officer, agent, employee or promoter selling the security had in the sale.

The issuing corporation was required to pose a bond

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[10] Ibid.

[11] Ibid., sec. 3.

with the Commission for not less than $1,000 nor more than $100,000, with the exact amount fixed by the Commission at not less than ten per cent of the issue.[12] The bond was posted to insure performance under the law and was subject to award by courts of competent jurisdiction to aggrieved parties under the Blue Sky Law of 1919.

The Commission, if it was deemed necessary, could make, or have made, a detailed inspection, examination, audit and investigation of the issuing concern.[13] Any investigation required to be made by the Commission was made at the expense of the promoter. The investigation by the Commission could include appraisal of the property of the issuer, including the value of patents, formula, good will, promotion and intangible assets.

The granting of the permit to sell securities was the sole prerogative of the Issues Commission. The criterion for issuance of the permit to sell was never approached within the statute except in a negative fashion. If, from the statements, papers and documents on file, any of the following items were found, the permit was to be denied:[14]

1. The makers or guarantors of the securities were

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[12] Ibid.

[13] Ibid., sec. 6.

[14] Ibid.

insolvent, in failing circumstances, or untrustworthy;

2. The promoters' plan of business was unfair, inequitable, dishonest or fraudulent;

3. The investors' interests were not secure against the unlawful dissipation or misapplication of the funds of the business;

4. Advertising or promotion material was misleading and calculated to deceive the investor;

5. Securities issued, or to be issued, in payment for property or intangibles were in excess of their reasonable value;

6. The business or enterprise was unlawful or against public policy;

7. The issue was simply a "get-rich-quick" scheme for the promoters.

Any of the above factors was sufficient grounds for denying the permit. It can be seen that the act was primarily a tool for regulating promoters.

In later years, registration of a new issue of securities came to be accomplished in any one of three ways, i.e., notification, coordination and qualification. Within the scope of the 1919 act, however, the only method of registration allowed was by qualification. Each and every issue had to judged on its merits and had to meet certain qualifications before it was eligible to receive the permit which was allowed for the sale of the security.

These qualifications were contained in papers and documents filed to register both the securities and dealers within this state. Prior to the issue of any security for sale, the filing of the following information was required for approval by the Commission:

1. A copy of the securities offered for sale;

2. A statement of the assets and liabilities of the issuing concern, including the total amount of securities, and any securities with prior claim to interest or lien;

3. A copy of mortgage or lien-creating instrument, and a component appraisal or valuation of any property covered, including a specific statement showing all prior liens on the property;

4. A statement showing gross and net earnings;

5. Any knowledge or information relative to the character or value of the securities, or the property or earning power of the person or company making and issuing or guaranteeing the issue;

6. A copy of the prospectus and any other advertising material used in connection with the issue;

7. The name, address, and sales territory of any person selling the securities;

8. The name and address of the promoter, all partners, if a partnership, and names and addresses of the directors, trustees, or any person owning ten per cent or

more of the stock of any corporation;

9. A statement, in detail, showing the plan on which the business was to be conducted;

10. A copy of the articles of co-partnership if the security was issued or guaranteed by a partnership;

11. A copy of the charter and by-laws if the securities were issued or guaranteed by a corporation;

12. A $25 filing fee.[15]

If the Commission then decided that the sale would be fairly and honestly conducted to both the issuer and the investor, the permit was granted. No provision for coordinating the issue with another state, nor for allowing old and well-established companies to issue securities by notifying the Commission was established. Each individual issue had to stand on its own merits.

Securities Purchasers Recourse

Under the Blue Sky Law of 1919, any person fraudulently induced to purchase the stock of any corporation because of a material misrepresentation of fact pertaining to the issue had the right to bring suit in a court of competent jurisdiction and recover damages.[16] The ten per cent bond posted by the issuer with the Commission was the security in case of a judgment in favor of the purchaser.

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[15] Ibid., chap. XXXXIX, sec. 2.

[16] Ibid., sec. 4.

The investor, however, could not recover more than the price which he had paid for the securities. The Commission could request the issuing corporation to increase the bond or to provide another one. Failure to do so was sufficient grounds for the Commission to cancel the registration permit.

Exempt Securities and Transactions

The exemptions under the provisions of the Blue Sky Law of 1919 were:

> 1. The securities of the Federal government, any foreign government or any of their taxing subdivisions;
> 2. Securities of any corporation regulated by the public service commission or similar boards;
> 3. Domestic corporations organized without capital stock for religious, charitable, or reformatory purposes;
> 4. State or national banks or trust companies, building and loan associations approved in this state;
> 5. The sale of stocks or bonds where they were sold for cash and no fee or commission was paid.[17]

The only exemptions of a transaction nature allowed by the Blue Sky Law of 1919 were those privately owned securities where the owner was not the maker or the issuer of the security, who acquires and sells the security for his own account in the usual and ordinary course of business.[18] This exemption is allowed those individuals who owned shares to sell the shares to another party without having to register the securities.

The list of exemptions, both securities and

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[17] Ibid., sec. 10.

[18] Ibid., sec. 15.

transactions types, was expanded as subsequent statutes are passed. The greatest growth was in the area of exempt transactions. As the securities industry grew and more people became securities owners, the number of securities transactions increased. The increased transactions presented more situations where exemptions were needed.

Adjudication of Important Cases

Securities transactions within the oil industry were predominant after the passage of the Blue Sky Law of 1919. The first oil well drilled in Oklahoma was in 1899. It was not until the discovery of the Glenn Pool near Tulsa in 1905, however, that the presence of oil in this state began to attract anything other than local interest. This discovery focused national attention on the state and its oil potential. The petroleum industry became a dominating factor in the economy of Oklahoma following this period. The petroleum refining industry, only a part of the over-all oil industry, produced 33,200,145 barrels in 1919.[19] The 1914 production had been 8,610,533 barrels, a five-year increase of 286 per cent. The total value of production in 1919 was $150,673,458.00, well above the 1914 figure of $13,014,372.00. The 1919 production was 37.5 per cent of the total value of all products manufactured in the state that year. Measured

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[19]U.S., Bureau of the Census, Fourteenth Census of the United States: 1920. State Compendium, Oklahoma.

by dollar value of the product, the oil industry ranked eleventh in 1901, third in 1914 and first in 1919.

The total value of the products produced by the petroleum refining industry in 1919 was $150,673,458, an increase of $137,659,086 and 1057.74 per cent over the 1914 production of $13,014,372. In 1919, the total value of the products produced by the petroleum refining industry amounted to 37.5 per cent of the total value for all manufactured products in the state.

The total production in barrels by the petroleum refining industry in Oklahoma in 1919 was 33,200,145 compared with 8,610,533 barrels produced in 1914. The increase from 1914 to 1919 was 24,589-612 barrels or 286 per cent.

The dominance of the oil industry, combined with the lucrative return attached to these speculative ventures made investing in oil securities very prominent during this period of time.

Hornaday et al v. State. The Blue Sky Law of 1919 was tested in a case tried in the District Court of Logan County, Guthrie, Oklahoma. Defendants in the case were W. H. Hornaday, John D. Richards, L. L. Billings, C. E. Wright, J. L. Patterson and Charles Kinkade.[20]

The state alleged in its complaint that Hornaday,

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[20]Hornaday et al v. State, 208 Pacific Second Reporter, p. 228.

a justice of the peace, precinct one, Logan County, Oklahoma, et al unlawfully sold securities to Fred J. Armstrong. The alleged unlawful sale involved speculative securities in a purported organization known as the Tri-State Oil, Gas and Mineral Association. The defendants were found guilty in the court of original jurisdiction and each was assessed a fine of $200. The defendants appealed the conviction in the district court, and the appeal was heard by the criminal court of appeals on June 22, 1922.

During the course of the district court trial, testimony developed that sales of these securities had been made to Fred J. Armstrong and several other people. The sales were for differing sums of money and all were speculative securities in the Tri-State Oil, Gas and Mineral Association. At no time were the securities registered in Oklahoma with the State Issues Commission.

The question involved in the suit was whether or not an assignment of an individual interest in an oil and gas lease was a security or speculative security within the meaning of the act. The appellate court, in considering the purpose of the act and the purpose for which it was created, made the following statement:

> The purpose of this statute, as gathered from the title considered together with the context of the act, appears to be twofold: first, to prevent the stockbrokers and promoters from perpetrating frauds and impositions on unsuspecting investors in hazardous undertakings; second, to protect credulous and incompetent persons from their own inclinations to

speculate in hazardous enterprises, though not brought about by interested promoters or stockbrokers.[21]

Using this statement as a point of departure, the appellate court maintained that there were two objects in the act, namely to prevent fraud and unfair dealings, and to prevent honest people from investing in uncertain, "get-rich-quick" schemes. The courts pointed out that the Blue Sky Law, recently enacted by the Oklahoma Legislature, was very similar in content to the laws recently passed by several other state legislatures. The general purpose of all these laws was to "Stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other ill-considered or fraudulent enterprises."[22]

One of the exceptions to the act, as previously noted, was that it did not apply to the sale of securities for cash where there was no commission or fee paid on the transaction. Since the transactions in question were for cash, and no commission was paid, they were held to have come under the exemption previously noted.

If this particular transaction had been a security transaction, and not an assignment, it was held to be an individual purchase of an interest in an undeveloped oil property. All the parties involved in the transactions had full knowledge and were quite aware of the fact that

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[21] Ibid., pp. 230-31.

[22] Ibid., p. 231.

the ultimate value depended upon future development.

Testimony in the trial court developed that the defendant had gone into the office of Judge Hornaday and requested information regarding the purchase of the assignment. The trial court pointed out that the transaction was completed without any inducement to make the purchase by means of stock sales inducements or trade talk. The defendant, in effect, walked in and asked to be allowed to purchase an interest in Tri-State Oil, Gas and Mineral Association. The court held that the act was not directed at, nor intended to apply to, transactions of this type.

> If one had knowledge that a friend owned a 'wildcat' oil lease and desired to purchase an interest therein, might he not do so without the consent of any board, or agent of the state?
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> The information shows that this was an assignment of an individual interest in a lease. The assignment was not made through the solicitation of the original promoters, rather than the purchaser himself, sought to become a member of the organization by buying an interest in the property. Thus, the purchaser became an original promoter and part owner of the lease. Thus, it did not come within the provisions of this act.[23]

The court of original judgment had convicted the defendant Hornaday and his associates and assessed their penalty at a $100 fine. The appellate court reversed the judgment of the trial court.

This was, undoubtedly, the precedent-setting case concerning the assignment of rights in an oil or mineral

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[23] Ibid.

lease. These assignments clearly did not come within the meaning of the statute at that time.

Groskins v. State. This case is, in effect, a constitutionality test of the "speculative security" section of the act. The original case was adjudicated in the district court of Lincoln County, Oklahoma; was appealed to the state's court of criminal appeals after conviction of the defendant Isodore Groskins for violation of the state's Blue Sky Laws.[24] The defendant sold to Mr. and Mrs. Thomas J. Hart securities in the Puritan Royalties Corporation, a Delaware concern. Involved in the transaction were 35 shares of Class A and 105 shares of Class B stock of Puritan Royalties. The payment was $100 in cash and eight shares of Cities Service Company Common Stock with a fair market value of $248 at the time of the transaction. It was an uncontested fact that the value of the Puritan Royalties shares depended upon future development and promotion rather than upon tangible assets and conditions. Furthermore, these were securities into which the element of chance or hazard of speculative profit or possible loss equaled or exceeded the element of reasonable certainty, surety and investment. At the time of the sale, neither the issuing corporation nor the defendant had complied with the provisions of the Blue Sky Law.

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[24]Groskins v. State, 4 Pacific Second Reporter, p. 117.

The defense of the accused was centered around the fact that the statute was unconstitutional. The defendant maintained the statute was too uncertain and indefinite in its terms of speculative securities to define a criminal offense. The appellate court made the following statement about this contention and this line of defense:

> The description and definition in 1 and 3 are too uncertain and indefinite to be valid under Section 6 of the Bill of Rights. Profits, gain or advantage . . . unusual in the ordinary course of legitimate business is vague and uncertain. There is no fixed standard in these definitions 1 and 3 to go by. A person by reading them cannot know what act it is his duty to avoid.[25]

Thus, the appellate court held that definitions 1 and 3 were so vague and indefinite that charging their violation does not tell the accused the nature and cause of the accusation against him.[26] They were declared unconstitutional under Section 20, Article 2 of the Oklahoma State Constitution.

The invalidation of these two definitions did not, however, apply to all sections of the law and all the definitions enumerated under the "speculative securities"

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[25] Ibid., p. 119.

[26] The two definitions being referred to are these: (1) All securities to promote or induce the sale of which profit, gain, or advantage unusual in the ordinary course of legitimate business is in any way advertised or promised; and (2) All securities into the specified par value of which the element of chance or hazard or speculative profit or possible loss equal or predominate over the element of reasonable certainty, safety, and investment.

portion of this act. Specifically, the defendant had raised some question during the trial and had offered in his own defense the same objections to definition number 4 that they had offered and raised to numbers 1 and 3.[27] The appellate court held that this was not something which could or should be subjected to an objective measure or test. The main objection raised and directed toward this definition was the use of these words "materially depends." The court held that the use of these general terms did not detract from nor discredit the definition and they did, in effect, so definitely define the offense that the accused was and could be aware of the nature and cause of the accusation made against him. On this basis the appellate court upheld the verdict of the lower court and the conviction of the defendant and the verdict of the lower court stood.

Blue Sky Law of 1931

The Blue Sky Law of 1931 was passed following the stock market crash of 1929 while this country was in the midst of the depression. It reflects some of the lessons learned since the passage of the original legislation in 1919 and the general tenor of the time. It spelled out in more detail the regulatory provisions necessary to handle

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[27]The definition being referred to is definition number 4: All securities the value of which materially depends on proposed or promised future promotion or development rather than on present tangible assets and conditions.

the issuance of primary securities than was found in the previous statute.

Definition of a Security

The Blue Sky Law of 1931 defined a security as:

> Any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, or right to subscribe to any of the foregoing certificates of interest in a profit-sharing agreement, certificate of interest in an oil, gas or mining lease, certificate of interest in an oil, gas or mining royalty, collateral trust certificate, pre-organization certificate, pre-organization subscriptions, any transferrable share, investment contract earnings, or any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, certificate, or receipt for a security or subscription to a security.[28]

Several changes can be noted between the Blue Sky Law of 1919 and the Blue Sky Law of 1931. The 1931 law did not attempt to differentiate between "security" and "speculative security" as the Blue Sky Law of 1919 had done. The definition of a security under the 1931 act was more comprehensive. Included under the definition of security in the 1931 act and not found under the 1919 act were these: any evidence of indebtedness; subscription right in any form; certificate of interest in an oil, gas or mining lease and/or royalty; collateral trust certificate; pre-organization certificates and/or subscription right and any other instrument commonly known as a security.

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[28] Session Laws of 1931 (Oklahoma City: Harlow Publishing Company) chap. XXIV, art. 11, sec. 1.

This portion of the Blue Sky Law of 1931 is based on the "full disclosure" principle. There is no distinction made between security and speculative security. A full disclosure of the facts was made and the individual investor made the decision regarding investment merit.

The attempt to establish some criterion for a speculative security was abandoned under the Blue Sky Law of 1931. All investment instruments were placed in the single category of securities.

Creation of Oklahoma Securities Commission

The Blue Sky Law of 1931 provided for the creation of the Oklahoma Securities Commission whose duty it was to administer and enforce the provisions of the act.[29] The Oklahoma Securities Commission replaced the State Issues Commission charged with enforcement responsibility under the Blue Sky Law of 1919. The Commission was composed of the State Bank Commissioner, the State Auditor, and the Secretary of State. The Blue Sky Law of 1931 did not provide compensation for these Commissioners, nor any reduction in the other duties which were assigned to them and considered to be their basic duties. The Blue Sky Law of 1931 provided, for the first time, a staff to administer the provisions of the act. This meant that the Commission became a policy-making body and left the actual administration

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[29]Ibid., sec. 2.

of the statute to the staff. The Commission was authorized to appoint a Commissioner, specifically charged with the administration of the act and a Deputy Commissioner. These two men served at the pleasure of the Commission and neither executive nor legislative approval was required in connection with the appointments. The act also authorized the appointment of an Auditor and a Stenographer-Clerk. Noticeably absent from the provisions of the act were any qualifications or criteria for selecting the personnel to fill these positions. The staff, provided by the Blue Sky Law of 1931, was an improvement over the provisions of the 1919 statute. The staff was fully authorized to administer the act. The Securities Commission became an advisory and policy-making body.

Exempt Securities

The list of securities exempted from the provisions of the 1931 statute was more comprehensive than those exempted from the 1919 law. Some of the additions to the list reflect changes which had transpired within the securities industry and the business community since the passage of the original statute. Specifically exempt from the provisions of the Blue Sky Law of 1931 were these securities:

1. Securities issued or guaranteed by the Federal Government or any of its political subdivisions, or the states, or any of their subdivisions;
2. Securities issued or guaranteed by any foreign government or political subdivision with which the United States maintained diplomatic relations;

3. The direct obligations of a national bank, securities issued by any federal land bank or joint-stock land bank or national farm loan association, or by any corporation created and acting as an instrumentality of the government of the United States.

4. Securities issued by any corporation subject to regulation or supervision, either as to its rates and charges and as to the issue of its own securities by a public commission board, or officer of the United States government, any state or political subdivision, or the Dominion of Canada;

5. Securities issued by a corporation organized exclusively for religious, education, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit;

6. Securities listed on any recognized or responsible stock exchange which had been previously approved by the commission;

7. Securities of any state bank, trust fund, or savings institution, incorporated under the laws of and subject to the supervisions, examinations, and control of this state, any insurance company or any building and loan association under the supervision of the Insurance Department of this state;

8. Negotiable promissory notes or commercial paper, including the execution and assignment of any contract;

9. Any security, other than common stock, providing for a fixed rate of return, which had been outstanding for more than five years, and which had not defaulted interest or principle payment for the immediately preceding five years;

10. Certificates of interest in an oil, gas or mining lease; certificate of interest in an oil, gas or mining royalty where the certificate represented an interest not less than one-tenth of an acre.[30]

The major exemption of the Blue Sky Law of 1919 excluded from the provisions of the Blue Sky Law of 1931 were cash sales where a fee or commission was not paid. Included in the 1931 act and not present in the 1919 statute were provisions exempting securities traded on organized exchanges, securities with a fixed rate of return which had not defaulted

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[30]Ibid., sec. 4.

in five years, and the certificates of interest in oil, gas or mining leases or royalty.

Exempt Transactions

Exempted under the provisions of the 1931 statute were the following transactions:

> 1. Any judicial, executor's, administrator's, guardian's or conservator's sale; any sale by a receiver or trustee in bankruptcy;
> 2. Sale by pledge holder or mortgagee to liquidate a bona fide debt;
> 3. An isolated transaction where the security sold or offered for sale is not made in the course of repeated and successive transactions;
> 4. A stock dividend or other distribution out of earnings or surplus, securities issued in the process of a bona fide re-organization, additional capital stock, or a corporation where distribution is made to present shareholders and where no commission or remuneration is paid;
> 5. Sale, transfer, or delivery of any securities to any bank, savings institution, trust company, insurance company, or to any corporation or to any broker or dealer, provided the business was the buying and selling of securities;
> 6. Transfer or exchange of securities between corporations involved in a merger or consolidation;
> 7. Bonds or notes secured by real estate where the entire transaction is sold to a single purchaser in a single sale;
> 8. Securities involved in stock splits or conversions;
> 9. Shares of capital stock subscribed to before incorporation when no commision, compensation, or remuneration was paid;
> 10. Delivery of voting trust certificates for securities deposited under a voting trust agreement.[31]

This, for all practical purposes, was the first time that specific transactions were exempt from the provisions of the Blue Sky Law. Privately held securities, disposed

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[31] Ibid., sec. 5.

of in the ordinary course of business, were exempt from the provisions of the 1919 law. This 1931 law, however, gave a much more comprehensive listing of exempted transactions.

Registration of Securities

Registration of securities under the provisions of the Blue Sky Law of 1931 could be accomplished by qualification or notification.[32] The Blue Sky Law of 1919 had allowed registration only by qualification.

Notification. TheBlue Sky Law of 1931 allowed, if the registration was by notification, the registration to be filed by either the issuer or any registered dealer interested in the sale of the security. The registration statement required:

1. The name and location of the issuer and place of incorporation;

2. A brief description of the security and the amount of the issue;

3. The amount of the securities to be offered in this state;

4. The price at which the security was to be offered for sale to the public;

5. A statement showing the security was eligible for registration by notification.

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[32] Ibid., sec. 6.

Under the provisions of this statute the following securities were eligible for registration by notification:

> 1. Securities of any organization in continuous operation for at least three years, which for the two years prior to issuing the securities had average annual net earnings as follows:
>
> a. not less than one and one-half times the annual interest charge on interest bearing obligations;
>
> b. not less than one and one-half times the annual dividend requirement of preferred stock;
>
> c. not less than five per cent upon all outstanding common stock of equal rank, together with the amount of common stock then offered for sale.
>
> 2. Bonds secured by first mortgage on real estate used for agricultural purposes in the United States and Canada, where the total face value of the bonds did not exceed 70 per cent of the fair market price, plus 60 per cent of the insured value of any improvements;
>
> 3. Bonds secured by first mortgage on real estate in the United States and Canada, where the real estate consisted of improved city, town, or village property where the total face value of the bonds did not exceed 70 per cent of the fair market value of the property;
>
> 4. Bonds secured by first mortgage upon real estate in the United States or Canada:
>
> a. where the mortgage was a first mortgage upon city, town, or village real estate where a building was or about to be erected;
>
> b. where reasonably adequate provisions had been made for financing the full completion of the building;
>
> c. where the total face value did not exceed 70 per cent of the fair market price on the mortgaged property.
>
> 5. Bonds secured by first lien on collateral pledged as security for such bonds with a bank or trust company as trustee, where the bank was incorporated under the laws of and subject to examination of the United States, or one of the states.[33]

The statutes set out very definite quantifiable measures to use in ascertaining whether a security was eligible

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[33] Ibid., sec. 7.

under the notification section. In the area of equity securities, the requirements were such that a company was required to cover their debt obligations with a comfortable margin of safety to be eligible. The debt obligations were confined for the most part to first mortgage real estate bonds with a comfortable margin of safety built in as a protection feature for the potential investor in this type of obligation.

The Commissioner had the authority to receive and to require notification of registration of any security which had substantially the same quality and description as one or more of the previously stated types of securities. This authority allowed the Commissioner to add any securities of the same general type as those listed but not included in the statute.

The Commissioner had the authority to revoke the registration of any security registration by notification, or to suspend it from further trading, pending a further investigation. The only criterion to be used in the suspension or revocation was the opinion of the Commissioner concerning information contained in the registration statement. If the information had become misleading, incorrect, inadequate, or incomplete, or if the sale or offering for sale worked, or tended to work, a fraud upon the investing public, the Commissioner could then suspend the security from further trading. Any security issuer, however, did

have the right to a hearing within twenty days after suspension.

The outstanding difference between the Blue Sky Law of 1919 and the Blue Sky Law of 1931 was the detail which the 1931 statute contained describing the various issues which may qualify by notification. These features or provisions for registration were not available to the issuer under the 1919 statute.

Qualification. All securities required to be registered by the Blue Sky Law of 1931, and not eligible for registration by notification, had to be registered by qualification.[34] The statute was, again, permissive in allowing registration by qualification by either the issuer or any registered dealer interested in the sale of the security. The information required in the registration statement included:

> 1. Names and addresses of the directors, trustees, and officers of the issuing corporation;
> 2. Location of the issuers principal business office and principal office in this state;
> 3. The purpose of the incorporation, the general character of the business, and the purposese of the proposed issue;
> 4. A statement of the capitalization of the issuer; a balance sheet not more than sixty days old; a copy of the security being registered and a copy of any circular, prospectus, advertisement, or other description of the security;
> 5. A statement of the issuer's income, expenses, and fixed charges during the past fiscal year;
> 6. A statement showing the price at which the

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[34] Ibid., sec. 8.

security was proposed to be sold, together with the maximum amount of the commission to be paid in connection with the sale of the security;

7. A statement showing the items of cash, property, services, patents, good will and any other consideration for which the securities were issued in payment;

8. The account of capital stock which was to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion stock;

9. A certified copy of the articles of incorporation with all amendments, audits and existing by-laws.[35]

If, after a thorough investigation of all the factors, the Commissioner ascertained that the sale of the security would not be fraudulent, nor work a fraud upon the potential investor, and that the business was based upon sound business principle, the security was approved for registration and sale.

The 1931 statute required much more detail than did the act of 1919. The information, required under the Blue Sky Law of 1931, was generally more statistical and quantitative in content than was the information required under the Blue Sky Law of 1919. The 1919 law, while requiring some factual information, seemed to be more concerned with being able to locate the promoters, sales personnel involved, etc., than it was with having information upon which to base a decision regarding the suitability of the issue.

An important addition to the 1931 statute required that the business be founded upon sound business principles. There was nothing in the statute to indicate on what the

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[35] Ibid.

Commissioner was to base his judgment, or the criterion to be used in forming his opinion in regard to sound business principles. This omission gave the Commissioner a great deal of latitude and discretionary power in determining what constituted sound business principles.

Revocation of Security Registration

The Blue Sky Law of 1931 provided the Commissioner with the authority to revoke the registration of any security by entering an order to that effect.[36] Revocation was based on an examination of the issuer by the Commissioner. The Commissioner could revoke the registration if he found that the issuer: (1) was insolvent; (2) had violated any provisions of the act or any order of the Commissioner; (3) had been, or was engaged, or was about to engage in fraudulent transactions; (4) was in any other way dishonest, or had made fraudulent representation in any prospectus or in any circular or other literature that had been distributed concerning the issuer or its securities; (5) was of bad business repute; (6) did not conduct its business in accordance with the law; (7) was in unsound condition; (8) was not founded upon sound business principles.

The Commissioner had the authority also as was granted in the earlier statute, to require any additional statements or amendments to existing statements which had

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[36] Ibid., sec. 10.

become obsolete as to content. Failure to comply with the requirement was basis for revocation of registration. The 1931 Blue Sky Law was much more explicit in the provisions of this section than was the Blue Sky Law of 1919. The earlier statute was not clear concerning the revocation of security registration. The Blue Sky Law of 1919 stated that the Commission had the right to investigate in case of complaint and the right to suspend or revoke the trading of securities. The grounds for the suspension or revocation were rather vague, however.

Registration of Broker, Dealer and Salesmen

Under the 1931 statute, as under the original law, no person was allowed to sell securities in the state until he was registered in the Commissioner's office.[37] The registration information included the principal's office, location of the office and all branch offices in the state, the name or style of doing business, the names, residences and business addresses of all officers and directors, the general plan and character of business and the length of time the dealer or salesman has been engaged in business.

Under the original law, the registration of securities and of the dealers was accomplished under the same section of the statute and distinction between the two was made for the first time in the 1931 act. The 1931 Blue Sky

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[37] Ibid., sec. 11.

Law did not require information concerning territory covered by a salesman, as did the Blue Sky Law of 1919.

The 1931 statute required the Commissioner to issue a license to the applicant if he found that the applicant was of "good repute" and had paid the required $5 filing fee. No criterion, other than an intuitive feeling of the Commissioner, was given for the approval or disapproval of the application by the Commissioner.

Revocation of Brokers, Dealers and Salesman Registration

The 1931 statute was much more explicit in the revocation of the registration permit than was its original counterpart. Registration could be revoked if the Commissioner ascertained that the applicant for registration: (1) had violated any provision of the act or any regulation made in the act; (2) had made a material false statement in the application for registration; (3) had been guilty of any fraudulent act in connection with any sale of securities, had been or was engaged in any practice or sale of securities which was fraudulent or in violation of the law; (4) had demonstrated his unworthiness to transact the business of dealer or salesman.[38]

The suspension or revocation order of the Commissioner, or the refusal to permit a granting of the license was subject to review. The suspension of activities of any

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[38]Ibid., sec. 12.

individual was enforced until that individual requested a hearing before the Commissioner. If the suspension order was upheld in the hearing, then that person had recourse before the civil courts of the state to seek redress.

Recourse from Fraudulent Sales

Every sale made in violation of the provisions of the Blue Sky Law of 1931 was voidable at the discretion of the purchaser. The statute did not state how the decision was to be reached that the sale was in violation of the act, but merely that any sale in violation of the act would be voidable. The act, likewise, made every person who participated in any way in such a sale liable, jointly and severally, for the purchase price of the securities. This procedure was a slight departure from the Blue Sky Law of 1919, which gave the offended party a recourse in civil court, and did not provide for the voiding of the sale at the discretion of the purchaser. The later act, however, still allowed the purchaser recourse to civil court if he so desired. The offended and defrauded party could take action against the bond required under the act.

Cases Adjudicated -- Meek v. State

The constitutionality of the Blue Sky Law of 1931 was tested in the case of Meek v. State. This case was originally tried in the district court of Osage County and heard on appeal by the criminal court of appeals of Oklahoma

on March 18, 1933.[39]

The case arose out of the sale of 300 shares of common stock of Globe Casualty Company of Oklahoma City common stock made by the defendant, F. J. Meek. The stock had not been registered for approval nor approved for sale by the Oklahoma Securities Commission. The trial in the court of original jurisdiction was very unusual in this instance. The defendant acted as his own defense attorney. He offered no evidence, nor did he offer any testimony in his own behalf. The defendant did not take the stand and testify in his own behalf at the trial. As one might suspect, the defendant was found guilty by the district court and assessed a fine of $1,000 and two years in the penitentiary.

In his appeal, he attempted to reverse the verdict of the lower court strictly on the basis that the statute, as enacted by the legislature was a revenue-raising measure. He further maintained that the act was not introduced and enacted as required by the constitution of Oklahoma for acts of this type.

In the opinion rendered by the appellate court, it was pointed out that in a previous decision, i.e. Hornaday et al v. State (and one previously reviewed in this paper), that the objectives of the act were to prevent fraud and

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[39]Meek v. State, 22 Pacific Second Reporter, p. 933.

unfair dealings in securities and to prevent honest people from investing in fraudulent and highly speculative schemes. The court pointed out that these objectives were well established and that it was a well-known and established fact that the regulation of securities transactions did come within the police power of the state.

It is also a well-established fact that revenue laws are those laws whose principal object is the raising of revenue and not those statutes under which revenue may, incidentally, occur. The revenue referred to in the opinion was the amount of fees paid at the time of registration of securities, brokers, dealers and salesmen.

After reviewing a long list of acts passed by the Oklahoma legislature, in which incidental revenue had arisen, the court held that the views and intentions of the governor and those of the legislature were clear and obvious. It was not the intention nor the desire of the legislature nor the executive to restrict from all legislation, revenue of an incidental nature. Any revenue mentioned in a bill of this nature was merely included to help to defray the expenses involved in the administration of the act under consideration. They could not be construed to be revenue-raising bills under the intention of the law, as passed by the legislature. Therefore, the judgment of the trial court was affirmed.

The defendant, in effect, had attacked the newly

enacted legislation on the grounds that it was unconstitutional, because it was improperly passed by the legislature.

While the defendant was incarcerated in connection with the original conviction, he appealed his conviction to the supreme court of Oklahoma and sought a writ from that body.[40] The defendant claimed that his rights under the Fourteenth Amendment to the United States Constitution had been violated and that the supreme court of Oklahoma should take jurisdiction of the case. The Fourteenth Amendment states that the states shall not deprive any of its citizens of life, liberty or property without due process of law; or deny any person from the equal protection of the law. His writ was turned down by the Oklahoma supreme court upon its finding that the amendment had not been violated in his case.

The Oklahoma Securities Commission -- Law of 1933

The 1933 session of the Oklahoma legislature made very few and only minor changes in the 1931 statutes.[41] Removed from the list of exempt securities were securities issued or guaranteed by foreign governments and those issued by corporation subject to regulation or supervision by a public commission board.

This act placed the responsibility of approving

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[40] Ibid., p. 54.

[41] Session Laws of 1933 (Oklahoma City: Harlow Publishing Company), chap. LXXXI, secs. 1-6.

all shares, regardless of the issuer, in the hands of the Securities Commissioner. Under the 1931 statute, certain companies regulated by other public authorities in Oklahoma had their securities approved by those authorities. For instance, an insurance company's issue of securities was approved by the insurance commissioner, after the request had been forwarded to him by the Securities Commissioner. The action taken by the Securities Commissioner depended on the approval or disapproval of the insurance commissioner. As the 1931 law was amended by the 1933 legislature, the entire decision of approval or disapproval was left to the discretion of the Securities Commissioner.

In the amended statute, the amount of fees and bonds collectible under the law had been increased in every instance.

The 1933 amendment did add one facet which had not been present in any of the previous versions of the law.[42] This amendment made it a violation for any person, other than a registered dealer, to give investment counsel or advice to other people on the value of securities, either in writing or in the form of oral communication, for a commission or a fee. The effect was to force investment counselors to register with the Commission.

Only one case was adjudicated and reached the

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[42] Ibid., sec. 6.

appellate court rising out of the 1933 amendment to the 1931 law. This case was appealed from the district court of Oklahoma to the supreme court of Oklahoma and was heard on October 5, 1937.[43] The case involved the authority of an individual, who was employed as a salesman and agent, in accordance with the Oklahoma Securities Act, chapter 24, article 23, Oklahoma Statutes 1931, and amended by chapter 121, Sessions Laws of 1933.

J. B. Moore was a salesman and agent for A. J. McMahan and Co. of Oklahoma City. During the course of his employment with this concern, he called in Perry, Oklahoma, at the home of Edith H. Brown. As a preliminary to his discussion with Edith Brown, he showed her both his written appointment as an agent for A. J. McMahan and Co., and also his license which authorized him to sell securities in the state of Oklahoma. During the course of the conversation with Edith Brown, he offered to buy from her some stock which she owned in the Tulsa Building and Loan Company. The approximate fair market value for the shares, at that time, was $6,100. In exchange for the shares, she was to receive cash in the amount of $1,500 and 20 shares of Armour and Company common stock. The approximate fair market value for the shares of Armour and Company common stock was $1,500.

In order to allow herself sufficient time to check

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[43]Brown v. A. J. McMahan and Co., 74 Pacific Second Reporter, p. 381.

on the reputability of the company which Mr. Moore was representing, she asked him to return at a later date. After becoming satisfied that the McMahan Company was an honest and trustworthy organization, she decided to complete the transaction with Mr. Moore.

He returned, at a later date, gave her the $1,500 cash, took the building and loan shares and promised delivery of the Armour stock. The stock was never delivered, and she attempted to recover damages from Moore's employer, the McMahan Company.

The testimony showed that Moore had no authority to make a transaction such as the one consumated with Edith Brown. Since he admittedly showed all of his credentials to her, it became her duty to know and/or to ascertain what he could and could not legally do under the authority which he legally held. It was further shown that McMahan did not provide the $1,500 for Moore to pay her, they did not receive the building and loan shares, nor did they own any shares in Armour and Company.

On the basis of this testimony, her damage claim was denied.

Abolishment of Oklahoma Securities Commission -- Law of 1939

The legislation of the 1939 session of the Oklahoma House and Senate was very brief, and to the point, as far as securities were concerned. The powers, duties, properties

and records of the Oklahoma Securities Commission were transferred to the Bank Commissioner of Oklahoma.[44] The Bank Commissioner had all the powers, duties and obligations which were formerly held by the Oklahoma Securities Commission. As far as the regulations of securities were concerned, this was a step backward for the state of Oklahoma. The situation was not rectified for a number of years.

The statute provided for the creation of an assistant to the Bank Commissioner, who was placed in charge of the securities division of the Banking Department of the state of Oklahoma. It also provided for the employment of one stenographer-secretary in the securities division of the state Banking Department. Since the appointment of the assistant to the Banking Commissioner was not discussed in the statute, it was assumed that he would be an employee of the state Banking Department, subject to the same employment policies as the other employees, and would serve at the will of the Banking Commissioner.

There was, however, one bright spot in the act as passed by the 1939 legislature. The act states, for the first time, the qualifications which the man appointed to this position should have. As meager as the qualifications were, they were still more than had been incorporated into

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[44] Session Laws of 1929 (Guthrie, Oklahoma: Co-operative Publishing Company, 1939), chap. XXIV, art. XII, sec. 1.

the acts of the previous legislatures. The new assistant to the Bank Commissioner was required to have at least three years of experience in "actual dealing" in securities and investments, or three years of actual experience in banking. No previous qualifications had been enacted by law.

Oklahoma Securities Commission -- Law of 1951

The 1951 session of the Oklahoma legislature dealt very briefly with the securities industry in the state. The changes, however, were significant ones.

Re-Establishment of Oklahoma Securities Commission

The statute passed by the 1951 session once again established the Oklahoma Securities Commission.[45] The powers, duties and the functions of the Bank Commissioner and of his assistant with respect to the securities industry were transferred to the newly re-established Oklahoma Securities Commission. The Oklahoma Securities Commission was charged with the administration and enforcement of the provisions of the statute.

Appointment of Securities Commissioner

The Commission, as it was to be re-established by the law of 1951, was a three-member commission. The

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[45] Session Laws of 1951 (Guthrie, Oklahoma: Co-operative Publishing Company, 1951), Title 71, chap. ii.

chairman of the Commission was the Commissioner of Securities. He was to be appointed by the governor with the advice and consent of the Senate. The qualifications of the man appointed to this position were described in some detail for the first time. These qualifications were:

> 1. Be of good character;
> 2. Be at least 30 years of age;
> 3. Be a resident taxpayer of Oklahoma for at least five years preceding his appointment;
> 4. Be thoroughly familiar with corporate organization, investment banking, investment trusts, the sale of securities, and the statistical details of the manufacturing industry and commerce of Oklahoma;
> 5. Have no interest directly or indirectly in any commercial bank, savings bank, trust company, industrial loan and investment company, credit union, building and loan association doing business in Oklahoma, or any company under his jurisdiction.[46]

The above qualifications were much better guidelines than had been previously been made through legislation.

Selection of Other Commission Members

The other two members of the Commission were selected by the governor with the advice and consent of the Senate. One member was to be an attorney and member of the Oklahoma Bar Association, selected from a list of nine names submitted to the governor by the Bar Association. The third member of the Commission was a member of the Oklahoma Bankers Association.

Although succeeding sessions of the Oklahoma legislature, periodically made changes in the statutes regarding

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[46]Ibid., Title 71, chap. ii, sec. 13.

the regulation of securities, the law remained basically the same after the 1951 session.

CHAPTER IV

THE OKLAHOMA SECURITIES ACT OF 1959

In the latter part of the 1950's the state of Oklahoma was operating under a securities act which had not been materially changed since its passage in 1931. A scandal within the financial community involving the invested funds of some 9,000 Oklahoma citizens was largely responsible for the revision of the Oklahoma statutes pertaining to securities regulation.

The impetus for revision of the statute pertaining to securities regulation in Oklahoma was furnished by the Selected Investments Company case. The conditions which existed in 1957-58 within this organization evolved over a long period of time.

The key personality or individual in this financial conglomeration was Hugh A. Carroll. Mr. Carroll, a native of Missouri, moved to Oklahoma in 1893 at the age of seven. He was graduated from high school in Hennessey, Oklahoma, in 1903.[1]

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[1]Oklahoma City Times, May 13, 1958.

After attending the University of Oklahoma for two years, Mr. Carroll became superintendent of schools at Cleo, Oklahoma. By the middle 1920's, he had been connected with several schools throughout the state and at least one college. He had also been employed as the manager of a utility company, and he had been the president of a bank which had failed. Mr. Carroll was instrumental in founding the Oklahoma Education Association and served as chairman of the organization committee. In his rather lengthy association with the Oklahoma Education Association, he undoubtedly gained valuable experience as a lobbyist which was beneficial to him at a later date.

In the latter part of the 1920's, he attended the Babson Institute of Boston and took a course in security analysis and appraisal. His exposure to the financial community through his banking experience and his utility experience, combined with his newly-acquired talent in the area of securities analysis, led to his eventual founding of the Selected Investments Company. He was influenced in his decision to found the company by conditions which existed at the time.

> Thousands of 'little people' who had bought stock on margin--and thought of themselves as rich while prices soared--had seen their paper profits disappear and their savings wiped out almost overnight.
>
> Safety, with a 'good interest return,' instead of quick sensational profits, was the watchword for investment.
>
> A new idea, investment trusts, was springing up all over the country. This idea was to form a company to

> buy the stocks and bonds of other firms. The 'trust' undertook to pool the savings of many small investors, buy many stocks and bonds, spread the risk of investment, and return profits to the owners of stock in the trust company.[2]

The idea of the type of organization which Mr. Carroll employed was neither original nor unique with him. He did, however, add one factor to his organization which will be discussed later. This factor did distinguish his organization from others of the same type.

Prior to applying for his corporate charter, Mr. Carroll tested the ideas embodied in Selected Investments for a period of two years.[3] Specifically, he tested his ideas concerning possible or potential investments for an investment portfolio. The funds supposedly used during this trial period were those of Mr. Carroll. The amazing success obtained with his trial portfolio led him to share his new-found ability with the general public. The fact that this trial period encompassed the years 1929 and 1930 is significant and should be noted.

Selected Investment's Articles of Incorporation are dated December 29, 1930. The objectives and purposes for which the Selected Investments Company was formed were:

> To transact a general investment business; to create, manage, and supervise, under indentures or other contractural relationships, investment trust funds and the cash and securities therein, and to issue certificate

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[2]Ibid., May 1, 1958.

[3]Ibid., May 13, 1958.

> bonds as evidence of the separate revocable trusts of participating interests the holder of such funds so created, managed, and supervised; to designate the trustee therefore; to enter into, make, perform, and carry out contracts with any corporation, association, firm or person; to buy, sell, hold, and deal in all kinds of listed and unlisted securities, and to loan money on real and personal property. This corporation will not do a banking trust business.[4]

The place of business was Norman, Oklahoma. The life of the corporation was to be 20 years and the incorporators were H. A. Carroll, N. G. Carroll, and Nelle Carroll. Five thousand dollars in stock was authorized. The capital stock was divided between $3,000 worth of seven per cent preferred stock and $2,000 worth of $1.00 per common stock. The preferred stock was never issued and the firm was launched with $2,000 paid-in stock.[5]

The articles of incorporation were amended in 1947 and the reference to a banking trust business was omitted. Added to the list of original incorporators were the names William A. Rigg and Vancil K. Greer. The capitalization was changed to 10,000 shares of common stock with a par value of $1.00 per share.[6]

Prior to bankruptcy the only other changes in the

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[4]From the original Articles of Incorporation of Selected Investments Corporation on file in the Secretary of State's office in Oklahoma City.

[5]Oklahoma City Times, May 13, 1958.

[6]Articles of Incorporation 1947 (These are actually amendments to the original Articles of Incorporation mentioned in footnote 4 on this page) on file in the Secretary of State's office in Oklahoma City, Oklahoma.

Articles of Incorporation were made in 1951. The incorporators listed are H. A. Carroll, William A. Rigg, and Julia K. Moore. At the same time, the authorized shares were changed from 10,000 and 100,000 shares of common stock with a par value of $1.00.[7]

The investment trust founded by Hugh Carroll was established as two separate corporations. This two-fold approach was the factor which distinguished this particular trust from others of the same type and made it somewhat unique in its field. One of the firms was Selected Investments Corporation, owned by Mr. Carroll and established solely for the purpose of managing a "trust fund."[8] The other firm was Selected Investments Corporation Trust Fund, in which certificates of investments were sold to investors with a promise of six per cent interest. The indenture specifically stipulated that the Selected Investments Corporation had complete control over the funds invested. Thus, the original $2,000 investment of Hugh Carroll, which at a later date grew to be $13,500 was the sole investment and gave Mr. Carroll the right to manage a trust fund which eventually grew into a $39 million fund. This unique arrangement with the different and distinct companies involved was finally the crux of legal

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[7]Articles of Incorporation of Selected Investments Company 1957 (Amendments to the Articles of Incorporation 1947) on file in the Secretary of State's office in Oklahoma City.

[8]Oklahoma City Times, May 14, 1958.

questions at the time of bankruptcy.

The financial giant was slow in getting started and by January, 1933, only $5,635 was in the bond fund. The fund had increased to only $130,800 by January of 1935.[9]

One of the bigger attractions as far as potential investors was concerned was the high rate of six per cent interest paid on their obligations by the Selected Investments Company. The factor was later incorporated into their advertising that "the company has paid a liberal dividend since 1929." An insight into the company can be gained from this statement since the company was not incorporated until late December of 1930. Testimony developed during the subsequent bankruptcy proceeding showed that the claim of not missing a dividend payment was bolstered by taking money from the trust fund to meet the interest payments in those years when less than a six per cent rate of return was earned by the company on its investments. Making interest payments from the trust fund was started as early as 1939 and at intermittent years thereafter.[10] Each year interest payments were made from the trust; thus, the ceritifcate holders were actually receiving a return of capital, not an interest payment.

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[9] Ibid., May 16, 1958.

[10] Ibid., March 28, 1958.

There are indications that the operations of Selected Investments were under investigation as early as 1946.[11] It was not until April of 1950, however, that a definite step was taken to control the securities of the company. On that date, the state Banking Commissioner suspended further sale of the company's securities and on April 21, 1950, the Commissioner revoked the registration of its securities.[12] This suspension and revocation came as a direct result of an examination and investigation into the affairs of the company made during February of 1950. As a result of this examination, certain requirements were set out for the company to meet as a condition for further sale of their securities. Selected Investments appealed the order of the Banking Commissioner to the Oklahoma County district court. The appeal was to determine the authority of the Commissioner to require an audit of the affairs of Selected Investments and to supervise its business as it did that of banks and savings and loan associations. The substance of the suspension order as issued by Mr. M. B. Cope, Deputy Banking Commissioner for securities was:

> The affairs of Selected Investments and its subsidiaries named are in unsound and an unsatisfactory financial condition. The issuer or its dealers in sale and distribution of its securities does not furnish and deliver to its certificate holders, or prospective holders, a prospectus descriptive of the securities

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[11] Daily Oklahoman, April 21, 1950.

[12] Ibid.

> or the terms and conditions under which such securities are issued, sold, or redeemed or the interest or dividend payable to the holder of the securities under the terms and conditions of trust agreement. The issuer is not conducting its business in accordance with law or upon sound business principles. The issuer is not conducting its business and is failing to maintain sufficient and proper records.[13]

The company was successful in its litigation tried in the district court. The court ruled against the actions of the Banking Commissioner and re-instated the right to sell shares in this state. The ruling had very little meaning, however, since the legislature had met in the intervening time and passed a law which removed the securities industry from the jurisdiction of the state Banking Commissioner.

The legislative session of 1951, in revising the statute to remove the securities desk from the Banking Commissioner and re-instate the Securities Commission and a commissioner of securities was influenced by the lobbying activities of Selected Investments. Several of the officers and directors of the company actively and openly campaigned and lobbied in the halls and rooms of the state capitol for the passage of this measure.[14] Later testimony showed that the legislation had the financial and moral support of Selected Investments. The weight of the governor's office and his chief administrative assistant, who

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[13] Ibid.

[14] Ibid., March 18, 1958.

openly lobbied for passage of the bill, was also placed behind the measure. The adjournment of the session was held up, pending the passage of this particular bill.

By 1951, the size of Selected Investments had grown to $10,000 in capital stock and about $11,000,000 in certificates of interest or bonds in trust indentures.[15] By the time formal bankruptcy proceedings were filed and granted in 1958, the amount of money had grown to exceed $39 million.

The bankruptcy proceedings were brought about by a combination of events and no single and specific event can be set out as the causative factor. The tax suits instigated by the state of Oklahoma and the threatened tax suit of the federal government were the events which are most closely associated with the eventual bankruptcy of the company.

The tax suit instituted by the state of Oklahoma resulted in the now famous Selected Investments case. This case as determined by the courts, and especially by the supreme court of Oklahoma, was of such importance that it will be reviewed in detail.[16]

The case was heard by the supreme court of Oklahoma on appeal from the district court of Oklahoma County on

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[15] Ibid., April 21, 1950.

[16] Selected Investments v. Oklahoma Tax Commission, 309 Pacific Second Reporter, p. 267.

March 12, 1957. The court of original jurisdiction had upheld the actions of the Oklahoma Tax Commission, and the Selected Investments Company appealed the decision.

The Oklahoma Tax Commission added an assessment to the 1948 state income tax returns of the company in the amount of $543,215.35. It was the contention of the tax commission that this amount of money was owed to the state of Oklahoma from earnings of the company. These earnings were the direct result of an investment of funds from the Selected Investments Trust Fund. The tax commission maintained that, in effect, this was an earning and income of Selected Investments. At the same time, the corporation contended that it did not own the trust fund nor its earnings or income. The corporation maintained that the earnings were the income of the "trust fund" as a separate legal entity; and, therefore, the income was not taxable to the corporation.

The first question to be settled, consequently, was whether or not Selected Investments and Selected Investments Trust Fund were, in effect, separate legal entities and whether the income previously mentioned was the income of the "corporation" or the "trust fund." Actually, the decision regarding the former automatically settled the second issue involved.

As the previously discussed Articles of Incorporation stated, one of the principal business activities of the

"corporation" was the management of trust funds. The management of trust funds was not the only reason for incorporation listed, although it was the major reason.

On the other hand, the "trust fund" was created as people were induced to make cash investments in the fund. The money that was advanced to the trust fund was deposited in a specific bank as a trust fund owned by the investors, and the bank was designated as the trustee. The indenture between the trust fund and the investors stated the details and conditions under which the trustee received the money and constraints on the handling of the money. Each investor was issued a certificate showing his investment, referring to the original indenture, and making each investor a party to that indenture and an owner of his proportionate share of the "trust fund."

The provisions of the indenture were such that the trustee had no authority to make investments or expenditures from the trust fund without the authorization of the corporation.

> The plan was the 'corporation' would select stocks and bonds or certain other properties or property interest or mortgages to be purchased for 'trust fund' and held for income and interest to 'trust fund' and for possible increase in value. Such stocks and bonds or other properties were the property of the 'trust fund' and upon sale of any such items the sales price or money received therefore went into 'trust fund.'[17]

At stated periodic intervals the "trust fund" paid

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[17] Ibid., p. 268.

the investors a stipulated rate of return and after this amount had been paid the "corporation" received a stipulated amount or rate of return for its services in managing the fund.

As deletions and/or additions were made in the investment portfolio of the "trust fund" or other property items were acquired, all the assets and/or expenditures were held by the "trust fund" and none held by the "corporation."

The court held that when money was accumulated in the "trust fund," nothing was added to the assets of the corporation. The corporation's assets did not reflect any changes in the value of the investments held by the trust fund.

Thus, it was apparent that the overall plan was stated and designed to create two separate legal entities, one being the "trust fund" and the other being the "corporation." The "trust fund" was established to receive and to hold the money of the investors and their property interests and the "corporation" was established to manage the assets of the "trust fund" for a stipulated and agreed compensation for its owners. These two entities kept separate books and records, and there was no co-mingling of funds between the two companies.

It was the position of the "corporation" that the tax which had been levied against it should have been levied against the "trust fund," if, in fact, it should have been

levied at all. It further maintained that the income was taxable to the owners (certificate holders), but under no circumstances taxable to the "corporation."

The court held that there were, in effect, two separate legal entities involved and that the trial court erred. The decision was reversed and the contention of the "corporation" was upheld. The vote on the supreme court of Oklahoma was 6 to 2, and a dissenting opinion was written in the case.

Because of the nature of the case, a review of the dissenting opinion will also be included in this paper. The dissenting justices held that it was the majority opinion that the "trust fund" and "corporation" were two separate legal entities and that the income from the trust fund was the income of the trust fund and, therefore, taxable against the trust fund. The dissenting opinion stated:

> The duties of the trustee are to keep the cash and securities constituting the investment or trust funds, and to authenticate certificates. He is a custodian, performing only such functions as directed by the corporation or provided in the indenture. He receives and pays out money and makes investments when directed by the corporation. He exercies no independent judgment in matters of policy. His duties are ministerial in nature to be performed as and when directed by the corporation.
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> As to the income earned by the investment of the trust fund in 1949, I am of the opinion it is immaterial whether the trust fund is a separate entity from the corporation. Although the earned income resulting from the inevestment of the trust fund is collected by the trustee and placed in the trust fund it is not the

income of the trust fund.[18]

The dissenting opinion also stated that the holders of the trust fund certificates had a contract right to receive up to six per cent on their investment regardless of whether the return to the investor was called interest or dividend.

Therefore, the certificate holder was the only person receiving any profit. Since the corporation and the trustees were under contract to pay it, it was the duty of the certificate holder to pay income tax on the income earned on his investment.

In the months following this decision by the supreme court of Oklahoma, the troubles of the Selected Investments Company began to multiply rapidly. The company by this time had holdings in both Texas and Oklahoma. Their investments included land development and real estate construction, grocery stores, hardware stores, automobile agencies, finance companies and many other types of investments.

In December of 1957, Selected Investments presented to the certificate holders a plan for reorganization of the company.[19] The reorganization was brought about by two factors. The first was the desire to expand the sales of the Selected Investments trust certificates into other

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[18] Ibid., p. 270.

[19] Daily Oklahoman, December 10, 1958.

states. With the implication of interstate sales of the securities, the Securities Exchange Commission had an interest from this point forward, and occasionally, the Commission was referred to in the litigations in which the company became involved.

The second factor was the warning which Selected Investments had received from the Internal Revenue Service that all earnings from 1957 forward would be taxable at the regular corporate income tax rate of 52 per cent. The reorganization would have allowed the issuance of bonds or debt-type obligations. The issuance of debt obligations would have allowed the company to consider the interest payment an expense. Selected Investments could then subtract the interest prior to computation of the income for tax purposes.

The proposed plan for reorganization provided the certificate holders little or no choice. The certificate holders had 30 days to state a preference. These choices were acceptance of the proposed reorganization or having their certificates redeemed at their value as of that date. The indication was given to the certificate holders that the value of the certificates to the holders was something less than the face or par value of these instruments. This apparent contradiction on the part of the management of the company brought many anguished cries of protest from the soon-to-be disillusioned certificate holders. The holders

felt, and rightly so, that they were being pressured into making a decision without being given adequate time to reflect on the various alternatives. The time factor was combined with the fact that insufficient information was provided on which to make a decision in the first place. What had apparently been a sleeping tiger, suddenly became very active. The certificate holders became quite interested in the exact status of Selected Investments. Their inquiries were directed to any person in an official or quasi-official capacity. Complaints were made to county attorneys, the governor, and the Oklahoma Securities Commission. An investigative committee of the House of Representatives which was holding hearings on an insurance matter in Oklahoma was brought into the investigation.

The state agency most directly involved, the State Securities Commission, received many complaints and inquiries. The Commission ordered a hearing into the operations of the company. Immediately prior to the hearing, it developed that a vacancy on the Securities Commission had existed for a period in excess of three years and had not been filled by appointment from the governor.[20] Pending a hearing, and upon the orders of the governor, the Securities Commissioner issued a temporary suspension order on January 4, 1958. This order forbade Selected Investments from selling securities and suspended trading in these

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[20]Ibid., January 3, 1958.

securities temporarily because:[21] "Selected Investments is in bad business repute and its business as presently being conducted . . . is not based upon sound business practices."

The suspension order called for a hearing before the Securities Commissioner. The proposed hearing proved to be something of a fiasco. The officers and directors of the company refused to either appear or to accept the subpoenas of the Commission. In one instance they walked out on the hearing and refused to testify after appearing at the appointed time and place for the hearing. The Selected Investment officers, using a previously successful legal maneuver, filed a case with the Oklahoma supreme court testing the original jurisdiction.

On January 8, 1959, a disenchanted certificate holder filed a suit in the district court of Oklahoma County asking a freeze on all of the assets of the company alleging irregularities in the lending activities of the company.

On January 10, 1958, the company agreed to the appointment of a receiver for the corporation.[22] It was the opinion of the court that the holdings of Selected Investments were so diversified and complex that a single receiver could not handle the job. Subsequently on January 14, 1958,

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[21] Oklahoma City Times, January 6, 1958.

[22] Ibid., January 10, 1958.

four receivers were appointed by the district court of Oklahoma County to manage the affairs of the company.

An independent audit by an outside firm showed that on February 26, 1958, the total asset value was $27,820,201.06 for a loss in asset value of $11,217,938.85.[23] Thus, at the time, the company had an asset value of about $.70 on the dollar.

On March 1, 1958, a hearing was held in the federal district court in Oklahoma City concerning a petition which had been filed by a group of certificate holders requesting the federal courts to take over the bankruptcy proceedings and remove it from the jurisdiction of the state courts. This was opposed by certain groups who wanted the proceedings to remain in the state courts. Selected Investments wanted the matter returned to the Securities Commission so the proposed reorganization could proceed along the previously suggested lines.

The parties involved in the litigation finally agreed that federal court bankruptcy procedure was much more clearly defined than was state procedure. An agreement was reached, placing the bankruptcy hearing in federal court. Transferral to federal court did not appease all the parties, however, since this decision was appealed to the 5th circuit court of appeals in Denver.[24] The question

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[23] Ibid., February 26, 1958.

[24] Ibid., March 10, 1958.

involved in the appeal litigation was whether or not the trust certificates were equity or debt obligations. If they were adjudged to be equity-type obligations, the bankruptcy proceedings would be simplified. If, however, they were debt-type obligations the owners would be considered in turn with other debt holders. The court eventually ruled that they were debt-type and the case was placed in federal court.[25]

Many suits and countersuits, allegations and counter allegations were made in the next few months regarding the operations, officers, and directors of Selected Investments Company. Some of the officers and directors of the organization were indicted both federally and on the state level, tried, convicted, and served sentences in a penal institution.

The company was eventually reorganized under the statutes as the Mid-American Corporation and the name has since been changed to the Doric Corporation. It is still a going concern in Oklahoma City today.

The Oklahoma Securities Act of 1959

Within the framework described surrounding the Selected Investments scandal, the legislature wrote a new statute for the regulation of securities. The statute passed by the 1959 session of the Oklahoma legislature is essentially the same statute in effect today.

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[25] Ibid., April 8, 1958.

Creation of Oklahoma Securities Commission

The Oklahoma Securities Act of 1959 once again created the Oklahoma Securities Commission consisting of three Commissioners. Also reactivated under the statute was the Department of Securities to administer the law. The Securities Commission was installed as the policy-making and governing authority of the department. The Commission appoints the Administrator and is responsible for the enforcement of the act.

The Commission is composed of three men appointed by the governor with the advice and consent of the Senate.[26] The appointment is for a six-year term of office, vacancies are filled for unexpired terms, one man is appointed every two years, and members are eligible for reappointment.

One member of the Commission must be a member of the Oklahoma Bar Association and is appointed from a list of names submitted to the governor by the Association. One member must be an active officer in a bank or trust company, appointed from a list of names submitted to the governor by the Oklahoma Bankers Association. The third member must be a certified public accountant in Oklahoma, appointed from a list submitted to the governor by the Oklahoma Certified Public Accountants Society. The state Bank Commissioner is an ex-officio member of the Commission.

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[26] Session Laws of 1959 (Guthrie, Oklahoma: Co-operative Publishing Company), Title 71, chap. i, sec. 4.

The Oklahoma Securities Act of 1959 forbids any member of the Commission to be a registered broker-dealer, agent, or investment adviser.

The statute also removes from civil liability a commissioner who acts or fails to act unless and upon proof of corruption. This provision is directly tied to the experiences gained under the 1951 statute involving the relationships and liabilities of the commissioners during the Selected Investments scandal.

The big change in this section of the statute from that passed in 1951 is in the composition of the Securities Commission. The Securities Administrator, as he is called in the 1959 statute, is no longer a member of the Securities Commission. Furthermore, the Administrator is no longer appointed by the governor. Instead, the governor appoints the Commission and then the Commission appoints an Administrator to carry out the policies which they set and enforce the provisions of the act. The 1951 statute allowed the chairman to participate in the formation of policies which he later administered.

Securities Administrator

The Securities Administrator is appointed by the Commission and serves at its pleasure. He administers the act under the supervision of the Commission and in accordance with its policies.

The Oklahoma Securities Act of 1959 states that the Administrator must have these qualifications:

> 1. A person of good moral character;
> 2. At least thirty years of age;
> 3. A resident taxpayer of Oklahoma;
> 4. Thoroughly familiar with corporate organization investment banking, investment trusts, the sale of securities and the statistical details of the manufacturing industries and commerce of this state;
> 5. No direct or indirect financial interest in any commercial bank, savings bank, trust company, industrial loan or investment company, credit union, building and loan association, or any other organization subject to his jurisdiction.[27]

These qualifications are almost identical with those contained in the 1951 statute. Although the qualifications listed are broad and vague, they present adequate guide lines as to the type of man the legislature desires for the Securities Administrator.

The Administrator, under the current law, is given more personnel to assist with the enforcement provisions and the regulation of the securities industry within the state. This increase is the direct result of the lessons learned from the Selected Investments case which illustrated that a lack of personnel had affected the administration of the previous statute. The Administrator, with the consent of the Commission, may appoint a Deputy Securities Administrator.[28] The Deputy Administrator is required by law to meet the same qualifications as those set out for the

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[27] Ibid., sec. 9.

[28] Ibid., sec. 10.

Commissioner.

The internal organization of the Department is determined by the Commission and is set up in such a manner as to enhance the efficient and effective enforcement of the act.[29] The Oklahoma Securities Act of 1959 requires that at least three divisions be included in the administrative set-up of the Department. These are divisions or departments which apply to: (1) registration of broker-dealers, agents and investments advisers; (2) registration of securities; and (3) investigation and enforcement.

For the first time in the history of securities regulation in the state of Oklahoma, the Administrator is given, under this act, some freedom to determine his personnel requirements. The Administrator is specifically required to submit in writing to the Commission a manual of the necessary positions covering the employees for the Department.[30] Included in the manual are job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other pertinent personnel information for the consideration of the Commission. The Administrator is given the authority to employ any accountants, auditors, examiners, clerks, stenographers, and other personnel he deems necessary for the proper administration

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[29] Ibid., sec. 12.

[30] Ibid., sec. 13.

of the act. The salary of these employees and of the Deputy Administrator is set by the Administrator within the framework of the Oklahoma Civil Service System.

As has been previously indicated, one of the many benefits derived from the investigations during the Selected Investments Company case was the realization by many people that for effective regulation of the securities industry an adequate staff with capable employees was required. Thus, the men who were responsible for the writing and passage of the current legislation made provisions for sufficient personnel at the time.

Registration of Broker-Dealers, Agents, or Investment Advisers

The Oklahoma Securities Act of 1959 requires that all broker-dealers, agents and investment advisers within the state of Oklahoma must be registered with the Oklahoma Securities Commission.[31] Furthermore, a broker-dealer cannot employ an agent unless the agent is registered under this act. All registrations must be renewed annually.

Registration of Securities

Under the provisions of the statute passed by the 1959 legislature, registration of securities could be accomplished by notification, coordination, or by

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[31] Ibid., sec. 201.

qualification.[32] Thus, we see for the first time, the addition of the widely accepted practice of allowing registration by coordination appear on the scene in the state of Oklahoma.

Regardless of the registration procedure used in securing the permit from the Securities Commission, the following requirements are common to all three methods:

> 1. A registration may be filed by the issuer, any person on whose behalf the offering is being made, or a registered broker-dealer.
> 2. A filing fee of 1/10 per cent of the maximum aggregate offering price of the securities to be sold in this state must be paid upon filing, with a minimum of $25 and a maximum fee of $300.
> 3. Every registration must specify (a) the amount of securities to be offered in this state; (b) the states in which a registration has been or will be filed; (c) any adverse order, judgment, or decree entered in connection with the offering by regulatory authorities in any state, by any court, or by the Securities and Exchange Commission.
> 4. Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a non-exempted transaction by or for the issuer by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participation in the distribution originally.[33]

The biggest improvement made in this section over previous laws was the hint at reciprocal treatment of the securities issue as it is affected by the action of the other states. A concern for the opinion of other states, the Securities and Exchange Commission, and courts of competent

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[32]A complete discussion of the three methods of registration is contained in Chapter VII.

[33]Session Laws of 1959, op. cit., sec. 305.

jurisdiction is indicated in this statute. The opinions of these other regulatory agencies concerning the validity of the issue in question is also considered.

The present statute requires more information than did its predecessor. The trend, within this section of the statute is toward a policy of "full disclosure." The issuing corporations are gradually being forced to reveal more and more information about themselves, their officers and directors, and the purposes for which the funds are intended.

Exemptions

As in the Blue Sky Law of 1931, the Oklahoma Securities Act of 1951 provides two categories of exemptions. Securities and transaction exemptions are included in the current statute.

Exempt securities. These securities are exempt from the provisions of this statute:

1. Securities issued or guaranteed by the United States, any state or political subdivision;

2. Securities issued or guaranteed by Canada, any province, or political subdivision, or any foreign government with which the U. S. maintains diplomatic relations;

3. Securities issued by any bank, savings institution, or trust company organized under the laws of the United States or any state;

4. Securities issued by any Federal Savings and Loan Association, any Building and Loan Association, or any similar association organized under the laws of any state and authorized to do business in Oklahoma;

5. Securities of any cooperative, non-profit, membership corporation or association organized in compliance with the laws of this state;

6. Securities issued or guaranteed by any Federal Credit Union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

7. Securities issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to jurisdiction of the I.C.C., (b) a registered holding company under the public utility holding company act of 1935, (c) regulated in respect of its rates and charges by a government authority of the United States or any state, or (d) regulated in respect to issuance or guarantee of securities by government authority of the United States, any state, Canada, or any province;

8. Securities listed or approved for listing on the organized exchanges registered under the Securities Exchange Act of 1934;

9. Securities of non-profit organizations, i.e., religious, educational, benevolent, charitable, fraternal, social, athletic, chamber of commerce, trade, or professional

association.

10. Any commercial paper arising out of current transactions;

11. Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing or similar benefit plan;

12. Certificates of interest or participation, or conveyance in any form, of an interest in an oil, gas, mining title or lease, or in payment out of production under such a title or lease.[34]

Exempt transactions. Under the provisions of the present statute the following transactions are exempt:

1. Any isolated, non-issuer transaction;

2. Any non-issuer distribution of an outstanding security if (a) a recognized security manual contains the names of issuers, directors and officers, a balance sheet less than 18 months old, and profit and loss statements for the preceding year, or (b) the security has a fixed maturity, interest or dividend and has had not defaulted within the past three years;

3. Any non-issuer transaction effected through a registered broker-dealer pursuant to an unsolicited order or offer to buy;

4. Transactions between the issuer and an

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[34] Ibid., sec. 401.

underwriter or between underwriters;

5. Transactions involving a debt security secured by a real or chattel mortgage, when sold as a single unit;

6. Transactions by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

7. Transactions executed by a bona fide pledgee without any purpose of evading the act;

8. Offers or sale to a bank, savings institution, trust company, insurance company, investment company, pension or profit sharing trust, other financial institutions or institutional buyers, or to a broker-dealer, whether the purchaser is acting for itself or some judiciary capacity;

9. Any transaction directed to, or involving less than ten people;

10. Any offer or sale of a pre-organization certificate or subscription if no commission is paid, number of subscribers is less than ten, and no payment is made by any subscriber;

11. Transactions involving an offer to existing security holders of the issue;

12. Any offer, but not a sale, of a security for which registration statements have been filed under both this act and the Securities Act of 1933.[35]

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[35] Ibid.

Any person claiming an exemption or an exception to any provisions of the statute has the burden of proof placed upon him to prove that he is qualified for the exemption or exception.

The Oklahoma Securities Act of 1959 is basically the same as the Blue Sky Law of 1931 in the section concerning exempt securities. The wording has been changed in some instances but the meaning remains the same. Only one exemption for securities is found in the present law and was not available under the previous statute. Specifically exempt are investment contracts issued in connection with employees' stock purchases, savings, pensions, profit-sharing or similar benefit plans. Transactions of this type were much more prevalent in 1959 than in 1931.

Three types of transactions are exempt under the present law and not included in the Blue Sky Law of 1931. The first of these were the provisions for non-issuer distributions under the present law. The second was transaction between issuer and underwriter or between underwriters. And the third was any transaction involving less than ten people.

Investigations and subpoenas. As a direct result of the Selected Investments case, no section of the present statute reflects the lessons learned and the information garnered during that investigation more than does this section of the Oklahoma Securities Act of 1959. As has been

previously indicated, the apathy of the Securities Commission and the Securities Commissioner, combined with the ineffectual nature of the statute at that time, was a highly significant and contributing factor in the inefficient regulatory procedures in the Selected Investments case. Under the later and present statute the Administrator's authority and the tools with which he can work are much more clearly defined.

The Administrator, at his discretion, may: (1) make in- or out-of-state investigations necessary to determine whether any person has violated or is about to violate any provisions of the act, rule, or order; (2) require or permit a written statement, under oath, concerning any violation of this act.

The Administrator, or any person he designates may administer oaths, subpoena witnesses, require their attendance, take evidence, and require the production of any books, papers, correspondence or other documents or records which he deems relevant or material to the inquiry. This is considerably more power and authority than was vested in the Securities Commissioner under the previous legislation. The difficulty encountered in getting the officers and directors of the Selected Investments Company to testify has been previously discussed.

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[36] Ibid., sec. 405.

Under the provisions of the current statute, no one is excused from attending and testifying, or from producing any record of document before the Administrator, or in any proceeding started by the Administrator, on the grounds that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture of his rights. At the same time, the statute specifically exempts from prosecution or any penalty, matters on which he is compelled to testify, after claiming his privilege against self-incrimination. The individual is not immune to prosecution and punishment for purjury or contempt committed while testifying.

The Administrator, or members of his staff, are required by this statute to examine, as soon as possible, all reports filed under this act in order to ascertain if additional information or investigation is needed. If it is the finding of the Administrator that additional and amended reports are required to correct any deficiencies or errors, the Administrator is authorized to secure any additional material he feels is necessary.[37]

After an issue has been registered, the Administrator is vested with the authority to go into any district court of the state of Oklahoma to seek an injunction. The injunction may be sought when it appears that any person has engaged

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[37] Ibid.

in or is about to engage in any act which is a violation of the act. This injunction would force the defendants to stop the acts or practices and would force compliance with this rule or order. If this action is upheld upon litigation, a receiver or conservator will be appointed for the defendant or his assets. Thus, the Administrator is armed with a much more forceable provision than was present in the previous versions of this statute.

Criminal Penalties and Civil Liabilities

The Securities Administrator, as established under the provisions of the statute, is not an enforcement agent as this term is usually construed under the law. He is established as a regulatory agent and is specifically required by statute to refer any evidence involving criminal violation of the act to the attorney general of Oklahoma or to the proper county attorney. He does not have the power nor the authority to make arrests. Thus, as happens in all investigative agencies from time to time, the time and effort spent on a case may be wasted if the prosecutor, in whose jurisdiction an alleged offense occurs, decrees that no action will be taken in a particular case. The statute does make a violation of this statute a felony, setting the punishment, upon conviction, at a $5,000 fine, imprisonment for three years, or both.[38]

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[38]Ibid., sec. 407.

Regardless of the direction which the criminal prosecution takes, the defrauded or offended party will still have recourse in a civil court of law for damages incurred in the transactions. The Oklahoma Securities Act of 1959 specifically forbids any person to offer or to sell a security as a violation of the act, to offer to sell a security by means of any untrue statement of a material fact, or to withhold a material fact to sell a security.[39] Any person committing any of the above offenses has a civil liability to the person buying the security. The act further provides that the aggrieved party has the right to recover the amount paid for the security plus ten per cent per year interest from the date of purchase, costs, and reasonable attorney fees.

Judicial Review of Administrative Orders

The issuing corporation are not entirely at the mercy of the Administrator to the extent that there is no appeal from his decisions. Any person who so desires may obtain a review of final order of the Administrator. After following the proper procedure as set out by the statute, the Securities Commission will review the Administrator's order within sixty days.[40] A further appeal is open to the supreme court of Oklahoma.

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[39] Ibid., sec. 408.

[40] Ibid., sec. 409.

Rules, Forms, Orders and Hearings

The Oklahoma Securities Act of 1959 specifically gives the Administrator the authority to make, amend, and rescind such rules, forms, and orders he deems necessary to properly enforce the provisions of the statute.[41] These rules will be discussed in Chapter VI. The statute further states that he may do this from "time to time." The rules and forms pertaining to registration, statements, applications, and reports are included in this category. The Administrator also has the authority to classify securities, people, and matters within his jurisdiction and to prescribe different requirements for different classes.

The Administrator may also prescribe the form and content of financial statements under the act and circumstances under which consolidated statements may be filed. He may require certification of financial statements by either a certified or independent public accountant.

Adjudication of Cases

Two cases have reached the appellate level arising from the Oklahoma Securities Act of 1959.

Al S. Nelson v. State. The case of Nelson was heard by the court of criminal appeals in Oklahoma on September 7, 1960, on appeal from the district court of

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[41] Ibid., sec. 410.

Tulsa County, Oklahoma.[42]

The defendant, Mr. Nelson, formed the Security Express Corporation in 1958 and received his charter from the state of Oklahoma the same year. The main purpose of the corporation was to engage in the money order business. The defendant was convicted for selling stock not registered with the Oklahoma Securities Commission. He received a fine of $200 and two years in the penitentiary.

The appeal was made on several grounds, the most pertinent being that the sale was an isolated transaction and that he was not aware that the security was not exempt from the provisions of the act.

The defendant testified in the trial that he sold stock to both the original incorporators and other individuals as well. The appellate court held that this was sufficient evidence to show that this was not an isolated transaction, but one of numerous transactions handled by the defendant. The court had this to say about isolated sales:

> An 'isolated sale' means one standing alone, disconnected from any other; 'repeated successive sales' means transactions undertaken and performed one after the other, and sales made within a period of such reasonable time as to indicate that one general purpose actuates the vendor and that such sales promote the same aim and are not so detached and separated as to form no part of a single plan. . . .
> . . . . . .

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[42]Al S. Nelson v. State, 355 Pacific Second Reporter, p. 413.

> The word 'isolated' is not a word of art or technical meaning, rather it is a term where the application depends upon the facts of the case.[43]

The court did not agree with the second line of defense used by the defendant in trying to get a reversal of the lower court decision:

> The law, however, puts the burden of such investigation on the party selling, and it is no excuse if he fails to ascertain if such security cannot in fact be sold. He is bound to make such investigation, if the security is not issued by him, to make a sale thereof; and we may presume that he did so, as it would not seem reasonable to presume that, knowing the law as he must, he would go ahead with the sale without an independent investigation.[44]

The appellate court upheld the decision of the lower court.

Otis T. Carr v. State. The case of Otis T. Carr v. State was heard by the court of criminal appeals on January 19, 1960, on appeal from the district court of Oklahoma County.

The defendant was convicted of selling securities not registered with the Oklahoma Securities Commission.[45] He was found guilty by the trial court and assessed a $5,000 fine. He appealed the decision.

The sole basis for his defense was the jurisdiction of the district court. The statute provided a penalty for

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[43] Ibid.

[44] Ibid.

[45] Otis T. Carr v. State, 359 Pacific Second Reporter, p. 606.

violation of the act of three years' imprisonment, $5,000 fine, or both. The defendant maintained that the statute did not say that the place of imprisonment was to be the state prison, thereby making it servable in a county jail. Thus, it was a misdemeanor and not within the jurisdiction of the district court which tried him.

The appellate court held that the intent of the legislature had been clearly established in previous cases and a sentence of more than one year meant the state prison, although not specifically stated. Since the statute provided for a three-year sentence, the intent of the legislature was clear. The judgment of the trial court was affirmed.

The defendant, Otis T. Carr, refused to pay the fine and a commitment was issued to the sheriff of Oklahoma County and he was incarcerated in the county jail. The fine was to be laid out at the rate of $1.00 per day.

The defendant sought a writ from the court of criminal appeals, contending he was being deprived of his liberty.[46] He maintained that it was cruel and inhuman to imprison a man for 5,000 days. The appeal court pointed out in its decision that the legislature had placed a maximum sentence of six months when a defendant fails to pay a fine assessed on him. They denied his motion for a writ.

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[46] Ibid.

Oklahoma Securities Act of 1961

The 28th session of the Oklahoma meeting in 1961 made a few minor changes in the Oklahoma Securities Act of 1959. Most of the changes made were of an administrative nature and made at the request of the Oklahoma Securities Commission. These changes were made by the legislature:

1. The definition of a broker-dealer no longer included a person engaged in the production of refining of various minerals;

2. The definition of security no longer included certificates of interest or payments out of production in oil, gas or mining titles or leases;

3. The filing fee for agent applications was increased;

4. A schedule of filing fees for security registration was provided;

5. Violations of the act were made felonies;

6. A provision was made for the cost of stenographic help when hearings are held before the Oklahoma Securities Commission.[47]

Oklahoma Securities Act of 1963

The 29th session of the Oklahoma legislature made only one change in the statute.[48] Employees of investment

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[47] Official Session Laws, 1961, Oklahoma (28th Legislature), pp. 578-586.

[48] Oklahoma Session Laws, 1963, Oklahoma (29th Legislature), p. 401.

advisers must take either a written, or an oral test, or at the discretion of the Administrator, both of them. The 20th legislative session in 1965 made no changes.

CHAPTER V

ORGANIZATION OF THE OKLAHOMA DEPARTMENT OF SECURITIES

General Authorities and Responsibilities

The securities industry in Oklahoma is regulated under the Oklahoma Securities Act of 1959, as amended by the legislative sessions of 1961 and 1963. This statute makes the Oklahoma Securities Commission the policy-making body and the governing authority of the Department of Securities. The Department, by statute, is divided into a minimum of three divisions. These divisions are: registration of broker-dealers, agents and investment dealers; registration of securities; and investigation and enforcement.[1] The Department of Securities as it is now operating does not contain these divisions, delineated in the manner prescribed by the law. The operation of the Department is on a functional basis built around several key positions, i.e., the Administrator, the Deputy Administrator, the Staff Attorney, the Staff Certified Public Accountant,

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[1]The Oklahoma Securities Act of 1959, chap. i, sec. 12.

and the Field Examiners. The organization and the operation of the Department of Securities is best illustrated by examining the duties and responsibilities of each of these positions.

The Administrator

1. To advise and to confer with the public on rules and regulations concerning the registration of securities, and the requirements of the security act in accordance with the law;

2. To confer with the administrative staff about the law, administrative rules and their effect on procedures and policy;

3. To exercise general supervision and to make regulations for the administration of the Department of Securities;

4. To enforce the provisions of the Oklahoma Securities Act;

5. To make recommendations to the Securities Commission regarding policy decisions pertaining to the operation of the Department of Securities;

6. To prepare budget requests to be submitted to the legislature when it is in session;

7. To make recommendations to the legislature regarding desirable changes within the statutes of Oklahoma pertaining to the regulation of the securities industry within Oklahoma;

8. To maintain relations with members of the Oklahoma legislature, both during and between sessions of the legislature;

9. To maintain liaison with firms and individuals actively engaged in the securities industry in Oklahoma;

10. To maintain relations with other state agencies and affiliated organizations with common interests;

11. Conducts quasi-judicial hearings involving the laws and rules of Oklahoma governing the sale and issuance of securities in Oklahoma;

12. To administrate or to designate an officer to administer oaths and affirmations, subpoena witnesses and to compel their attendance, take evidence and require that any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry be produced;

13. To make, or cause to be made, such public or private investigations within or without the state of Oklahoma that he deems necessary to determine whether the securities laws have been violated or complied with;

14. To approve or to exempt prospectices, pamphlets, circulars, form letters, advertisements, or other sales literature in any manner in connection with the offer or sale of any securities;

15. To register, deny, revoke, suspend, cancel or accept withdrawal of registration of securities as

stipulated as state securities laws;

16. To issue administrative orders.[2]

The last duty listed for the Administrator is perhaps the most important duty and the most powerful tool he possesses. The Administrator is given the right to make such rules and regulations as are necessary to carry out the provisions of the act. Specifically the statute says:

> The Administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the Administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.[3]

As of this date there are twelve administrative rulings in effect. These administrative rules will be discussed in Chapter VI of this paper.

The Deputy Administrator

The Department of Securities employs a single Deputy Administrator whose duty it is to perform highly responsible administrative work in the state regulation of the securities industry. He assists the Administrator in administering

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[2]Interview with Carl Engling, Securities Administrator, Department of Securities, Oklahoma City, Oklahoma, June 4, 1965, and Unpublished Bulletin, Personnel Department, Capitol Building, Oklahoma City, Oklahoma, July 20, 1964.

[3]The Oklahoma Securities Act of 1959, sec. 410.

all laws pertaining to the regulation of the securities industry within the state of Oklahoma. The Deputy Administrator usually works with full authority in representing the Department of Securities. His work may be reviewed and coordinated through conferences with the Administrator in cases of deviations from established policies.

The Oklahoma Securities Act of 1959 states that the Deputy Administrator shall perform all the duties required to be performed by the Administrator when the Administrator is absent or unable to act for any reason. The Deputy Administrator must, therefore, be prepared to perform any of the previously listed duties of the Administrator. In addition to these duties, the following examples of work performed by the Deputy Administrator show his tremendous importance in the regulation of securities issues.

1. To advise and to confer with the public on rules and regulations concerning the registration of securities, and the requirements of the security act in accordance with the statutes;

2. To conduct, in the absence of the Administrator, or by his designation, quasi-judicial hearings involving the laws and rules of Oklahoma governing the sale and issuance of securities in Oklahoma;

3. To cooperate with the Administrator, in registering, denying, revoking, suspending, cancelling, or accepting withdrawal of registration of securities as stipulated

in the state security laws;

4. To answer correspondence submitted to the Department of Securities pertaining to the Oklahoma Securities Act. A majority of this correspondence concerns the exemption provisions of the Oklahoma Securities Act;

5. To attend and participate in staff conferences. The usual participants are the Administrator, the Staff Attorney, and the Staff Certified Public Accountant. Topics are usually problems which have arisen outside the realm of established policy or new situations which continually present themselves;

6. To direct, confer and advise the administrative staff and office personnel on the day-to-day procedures of the Security Commission office;

7. To approve or to exempt prospectices, pamphlets, circulars, form letters, advertisements, or other sales literature in any manner in connection with the offer or sale of securities;

8. To attend regional and state meetings of securities administrators;

9. To handle routine budgetary matters with the Department of Securities.[4]

The Deputy Administrator is appointed by and serves at the pleasure of the Administrator.

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[4]Interview with John McNerney, Deputy Administrator, Department of Securities, Oklahoma City, Oklahoma, June 15, 1965.

The Staff Attorney

The Department of Securities employs one attorney, licensed to practice law in the state of Oklahoma. The Staff Attorney must be a graduate from an accredited college or university with a degree in law, hold active membership in the state bar association of Oklahoma and must have had three years of successful and responsible practice of law.[5] Some examples of the work performed by the Staff Attorney are:

1. To analyze factual and legal issues; review policies, procedures, regulations, technical manuals and other related legal questions for the Department of Securities;

2. To conduct research on laws, legal opinions, policies, regulations, legal texts and precedent cases; to conduct pre-trial examination of witnesses; to perform advisory services or legislative review;

3. To prepare memoranda or reports outlining facts and legal issues, necessary legal documents, and advisory opinions for administrative personnel;

4. To draft or to make comments on proposed legislation or changes in legislation;

5. To prepare and/or present: the agency's case in administrative hearings and before a court; to show

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[5]Unpublished Bulletin, State of Oklahoma, March 22, 1962.

cause orders, complaints, briefs, motions, and other documents preparatory or incidental to the trial of a case;

6. To participate in pre-trial or pre-hearing conferences; to examine and cross-examine witnesses, to argue motions before the court or hearing officer; and to summarize the Department of Securities' case in any of these hearings;

7. To examine formal filings for legal sufficiency and full disclosure required by statutes, rules and regulations; to conduct or participate in conferences with other legal counsel;

8. To examine petitioners, claimants, and defendants against charges brought under the administrative rulings of the Administrator or under the provisions of the Oklahoma Securities Act of 1959.

The Staff Attorney of the Department of Securities spends a majority of his time rendering legal opinions concerning all types of registration, i.e., securities, broker-dealers, agents and investment advisers, as to the conformity of their registration with the Oklahoma Securities Act of 1959.[6] He also examines the documents involved in the different types of registration; such as articles of incorporation, corporate charters, prospectices, and legal opinions

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[6]Interview with Jess Maynard, Staff Attorney, Department of Securities, Oklahoma City, Oklahoma, June 17, 1965.

of counsel in connection with registration statements. Any errors or omissions encountered by the Staff Attorney are handled by him and returned to the applicant or to the registrant's attorney.

The Staff Certified Public Accountant

The Department of Securities employs one certified public accountant. He must be a graduate of an accredited college or university with a major in accounting or its equivalent, combined with two years of full-time paid employment. He must have taken and successfully completed the examination for certified public accountants and must be licensed to act in this capacity in the state of Oklahoma.[7]

Some duties of the Staff Certified Public Accountant are:

1. To maintain cash journals, purchase order registers, control registers, ledgers and other fiscal records;

2. To prepare an analysis of expenditures and a monthly report of operation, financial statements, schedules and statistical data;

3. To pre-audit and/or post-audit payrolls and travel expense vouchers; reconcile bank statements;

4. To check the applications of prospective applicants, concentrating on the accounting statements attached thereto, and to check the prospectus of the company.

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[7]Unpublished Bulletin, State of Oklahoma, August 17, 1965.

5. To check the prospectus for wording, content, and consistency with the financial statements, and to check other supporting documents in connection with the registrant's application;

6. To conduct planning and counseling conferences with prospective applicants, their attorneys and accountants;

7. To maintain records and files and connections with accounting work;

8. To give expert testimony in connection with both administrative hearings and other judicial proceedings resulting from actions taken by himself or other members of the Department of Securities.[8]

The Staff Certified Public Accountant spends approximately twenty per cent of his time checking registration applications which have been filed jointly with the Securities Exchange Commission. He also spends about twenty per cent of his time on conferences with attorneys, accountants, and prospective registrants concerning either pending registrations or the difficulties encountered in the updating of the prospectus. The balance of the time is spent on local applications, which includes the updating of prospecti and on reviewing applications for registration.[9]

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[8]Interview with Claude Olivera, Staff Certified Public Accountant, Department of Securities, Oklahoma City, Oklahoma, June 17, 1965.

[9]Ibid.

The Field Examiners

The Department of Securities employs two people in the position of field examiner. These employees must be graduates of accredited colleges or universities or have the equivalent number of hours required for graduation. Under some conditions, a substitution of one year of employment for each year of college education is allowed.

Some duties of the field examiner are:

1. To examine financial records and property inventories; to investigate selling or trading methods of business units engaged in securities transactions in Oklahoma;

2. To examine control and subsidiary accounts; to reconcile discrepancies;

3. To prepare trial balances; to analyze surplus and reserve accounts and schedules of exceptions; to determine amounts of outstanding stock;

4. To examine corporate minute books; to excerpt material items; to examine financial statements; to investigate material changes in assets and liabilities;

5. To prepare final reports covering routine examinations;

6. To investigate complaints concerning securities transactions; to recommend cancellation or suspension of license; or the prosecution of participants;

7. To examine applications for registration and to make related recommendations;

8. To make recommendations as to holding of funds in trust and placing of stock in escrow;

9. To take names and addresses of security holders for records of corporations being investigated and to contact these individuals to verify ownership of the securities and circumstances surrounding the sales;

10. To recommend that charges be preferred in the form of administrative hearings before the Securities Administrator in connection with violations of both the Oklahoma statutes, and the rules and regulations of the Oklahoma Securities Commission. He gives testimony in connection with hearings regarding facts found in his investigation.[10]

A major portion (approximately eighty per cent) of the Field Examiner's time is spent in the metropolitan areas of Tulsa and Oklahoma City.[11] The Field Examiner spends approximately sixty-five per cent of his time making field audits of the various companies registered in the state, thirty per cent of his time in review and preparation prior to the examination and writing of the report after the examination; and the balance of his time is spent in committee meetings, administrative hearings, and routine office procedures.

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[10]Unpublished Bulletin, State of Oklahoma, August 17, 1965.

[11]Interview with Ross Shelton, Field Examiner, Department of Securities, Oklahoma City, Oklahoma, July 26, 1965.

Other Office Personnel

The Department of Securities employs six people classified in the category of file,clerk, secretary, and general office worker. These personnel handle the routine affairs of the office, type correspondence, check incoming applications, issue receipts, and perform other routine office matters as assigned.

Financial Operations of the Department

The Department of Securities receives its operating funds from the bi-annual sessions of the Oklahoma legislature. Fees collected by the Department go into the general operating fund of the state of Oklahoma. Questions relating to revenue-raising functions of the Department of Securities were settled in the case of Meek v. State, discussed in Chapter III of this paper. Any revenue produced in connection with the securities statute in Oklahoma is incidental to the primary purpose of the law.

Table 1 shows the total appropriations and receipts of the Department of Securities for the fiscal years 1960-1965. During fiscal year 1960, receipts exceeded appropriations by approximately eighteen per cent. Fiscal year 1961 appropriations remained the same while receipts increased by approximately twenty-six per cent to a point where receipts exceeded appropriations by more than 48 per cent. This general pattern has held true for the succeeding years

TABLE 1

LEGISLATIVE APPROPRIATIONS AND RECEIPTS
OKLAHOMA SECURITIES COMMISSION
FISCAL YEARS 1960-1965

Fiscal Year	Appropriations			Receipts	Excess receipts over Appropriations
	Payroll	General Expenses	Total		
1960	$43,450.00	$16,550.00	$60,000.00	$70,984.88	$10,984.88
1961	43,450.00	16,550.00	60,000.00	89,296.83	29,296.83
1962	57,505.75	22,494.25	80,000.00	134,266.83	54,266.83
1963	62,707.84	17,292.16	80,000.00	131,589.89	51,589.89
1964	68,509.20	22,970.80	91,500.00	134,275.34	42,775.34
1965	68,030.78	23,469.22	91,500.00	152,123.92	60,623.92

Source: Oklahoma Securities Commission Financial Reports, 1960-1965.

with receipts exceeding appropriations between forty per cent and sixty per cent yearly. Appropriations from fiscal year 1960 to fiscal year 1965 increased 52.5 per cent while receipts for the same period of time increased by 214.3 per cent.

Fiscal year 1966 has a total appropriation of $113,150.00, an increase of approximately 24 per cent over the appropriation for fiscal year 1965.[12] Receipts for the first seven months of fiscal year 1966 amounted to $95,346.57 compared to $91,085.50 for the first seven months of fiscal year 1965.[13] This represents an increase of 4.7 per cent in receipts.

Table 2 is a summary of the sources of receipts for the Oklahoma Securities Commission. During fiscal year 1960, the fees paid by security issuers amounted to 75.7 per cent of the total receipts, broker-dealer registration accounted for 12.1 per cent, agent registration fees amounted to 7.7 per cent and updating of financial reports accounted for the final 4.5 per cent of the total receipts for that year. Absent as a source of receipts during this fiscal year were investigation fees. The first field investigator was not authorized by the legislature and employed by the Department of Securities until fiscal year

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[12]Oklahoma Securities Commission Financial Report, January 31, 1966.

[13]Ibid.

TABLE 2

SOURCES OF RECEIPTS -- OKLAHOMA SECURITIES COMMISSION
FISCAL YEARS 1960-1965

Fiscal Year	Security Issuers Fees	Broker-Dealers Fees	Agents Fees	Financial Reports	Investigation Fees	Total Receipts
1960	$53,762.38	$8,600.00	$ 5,492.50	$3,130.00	*	$70,984.88
1961	69,564.33	5,400.00	10,752.50	3,580.00	*	89,296.83
1962	105,268.82	7,480.00	16,300.00	4,010.00	$1,208.01**	134,266.83
1963	96,616.64	6,682.50	20,320.00	5,049.00	2,921.75	131,589.89
1964	87,487.35	6,645.00	22,425.00	4,792.85	12,925.14	134,275.34
1965	107,738.05	6,345.00	21,385.00	4,895.00	11,760.87	152,123.92

* No investigation fee collected this year.
** Investigation fee collected for last nine months of fiscal year 1962 only.

Source: Oklahoma Securities Commission Financial Reports, 1960-1965.

1962.[14]

The amount of fees paid for the registration of securities has remained between 70.8 per cent of total receipts in 1965 and 78.4 per cent of total receipts in 1962 for this period with the exception of one year. Registration of securities during fiscal year 1964 produced only 65.2 per cent over the total receipts collected that year. As a general rule, fees paid for the registration of securities has generated approximately 73 per cent of the total receipts collected by the Department with the one exception previously noted.

Fees paid for registration or renewal of broker-dealers license when taken as a percentage of the total receipts collected each year has been steadily declining since 1960. During fiscal year 1960 broker-dealer fees constituted 12.1 per cent of the total receipts, and then for each succeeding year, 6.0 per cent, 5.6 per cent, 5.1 per cent, 4.9 per cent, and 4.2 per cent for 1965. This fact is probably attributable to the increased bonding requirements as required in administrative ruling 59-1, previously discussed in this paper.

In contrast to the broker-dealer situation is that of the agents and the fees collected for registration and renewal of license when taken as a percentage of the

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[14] 1962 Annual Report to the Governor, Oklahoma Securities Commission.

total receipts collected each year. Agents' fees collected in 1960 amounted to 7.7 per cent of the total receipts collected. This percentage of total receipts collected has increased steadily until 1964 when fees for registration and renewal of agents' licenses constituted 16.7 per cent of the total receipts received in 1964. Fiscal year 1965 reveals a decline in the agents' fees as a percentage of the total receipts to 14.1 per cent for that particular year. The steady increase would seem to indicate that some of the people who were formerly registered as broker-dealers are now working as agents for other broker-dealers or they are registered as agents for the issuing corporations.

The fees derived from the activities of the field investigators were non-existent for the fiscal years 1960 and 1961. With the advent of the field investigation program during fiscal year 1962, the percentage contribution of investigation fees with respect to the total receipts for the year was .9 per cent. Investigation fees increased to 2.2 per cent of the total receipts for fiscal year 1963. Legislative approval was given for the employment of one additional field examiner during fiscal year 1964.[15] The additional examiner accounts for the increased activity in the area of field examinations and thus the increased investigation fees. As a percentage of total receipts,

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[15] 1964 Annual Report to the Governor, Oklahoma Securities Commission.

investigation fees increased to 9.6 per cent during fiscal year 1964. This figure was reduced to 7.7 per cent of total receipts in fiscal year 1965.

The first seven months of fiscal year 1966, in comparison with the first seven months of fiscal year 1965, reveals the following information.[16] Fees for registration of securities increased $3,738.75 or 6.0 per cent, fees for registration and renewal of broker-dealers' licenses increased $35.00 or less than 1 per cent, fees for registration and renewal of agents' licenses decreased $700.00 or .5 per cent, fees from financial reports have increased $602.00 or 22.9 per cent, fees from field investigation have increased $1,185.32 or 16.3 per cent and total receipts have increased $4,261.07 or 4.7 per cent. If the balance of fiscal year 1966 continues at the same rate as the first seven months of the year, the total receipts will be approximately 5 per cent larger than fiscal year 1965.

Publications

The Department of Securities is charged with the responsibility of publishing and distributing to interested parties, information and materials pertinent to the regulation of the securities industry of Oklahoma. These publications are the Annual Report to the Legislature and the

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[16] Oklahoma Securities Commission Financial Report, June 31, 1965.

Governor, the administrative rulings ofthy Department, occasional informal directives sent directly to the interested parties within the industry and a condensed version of the Oklahoma Securities Act.[17]

The Annual Report to the Members of the Legislature and the Governor contains the following data:

1. A recapitulation of any administrative ruling issued within the last year;

2. A summarization of the violations and the actions taken on each within the past year;

3. A recapitulation of examinations and investigations conducted within the past year;

4. A list of departmental personnel;

5. A summary of the registration, applications, the amount of fees collected, and final disposition for the year;

6. The minutes of the monthly meetings of the Oklahoma Securities Commission;

7. A summary of the statistical highlights of the year.

Administrative rules are issued by the Administrator whenever they are necessary to carry out the provisions of the Oklahoma Securities Act.[18] The currently enforceable administrative rules will be discussed in detail in

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[17]Interview with Carl Engling, July 22, 1965.

[18]Session Laws of 1959, Oklahoma, Title 71, chap. i, sec. 410.

Chapter VI. Wide publicity is given new rules by making them available to all interested parties. In addition to the initial publication, the Department maintains a supply of this material, which is available free to any individual requesting it.

The Department formerly published a weekly newsletter and sent it to all interested parties within the state of Oklahoma. Recently, however, this practice has been discontinued, and the directives are issued only when important changes affecting the securities industry have occurred. This makes the publications less routine and places greater emphasis upon them.

The Department of Securities has published for general distribution an abbreviated version of the Oklahoma Securities Act in booklet form. A summary of the statute is contained in this publication, but portions covering internal organization have been deleted.

CHAPTER VI

REGULATION AND CONTROL OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS

Control of broker-dealers, agents and investment advisers in Oklahoma by the Oklahoma Securities Commission is achieved through licensing those individuals engaged in selling securities in the state of Oklahoma. General provisions of the Oklahoma Securities Act relating to broker-dealers, agents and investment advisers were discussed in Chapter IV. Details of the procedures involved, administrative hearings, and other facets of control relating to the licensing of broker-dealers, agents and investment advisers will be discussed in this chapter.

Statutory Requirements for Regulation of Broker-Dealers, Agents and Investment Advisers

Section 201 of Title 71, Oklahoma Statutes, makes it a violation of the statutes for any individual to engage in the securities business in the state of Oklahoma unless he is registered with the Department of Securities either as a broker-dealer, agent or investment adviser.

The registration is for a one-year period and is subject to renewal.

A broker-dealer, agent or investment adviser can obtain a license or renew an existing license by filing an application with the Administrator.[1] The application contains information pertaining to such matters as:

1. The applicant's form and place of organization;

2. The proposed method of doing business;

3. The qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

4. Any injunction or administrative order of conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

5. A financial report of broker-dealers and investment advisers consisting of a balance sheet and such other information regarding applicant's financial condition and history as may be required.[2]

The following information is required in connection

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[1]Oklahoma Statutes, Title 71, sec. 202.

[2]Ibid.

with each of the different types of licenses.

Agents

An agent is defined by the Oklahoma Securities Act of 1959 as:

> . . . any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.[3]

The Oklahoma Securities Act provides the procedure and the control mechanism for the issuance of an agent's license in Oklahoma. Both the initial issuance of a license and a renewal must be accomplished with the same application form. Information required on the application blank follows the general guidelines set out in the statute, but in greater detail. The application requires the following information:

1. The name and address of the applicant;

2. A true and complete record of the applicant's employment for the last five years giving employers' names, addresses, capacity in which employed, date employed and date terminated;

3. A statement regarding the applicant's education, knowledge, and experience qualifying him for registration as an agent;

4. A statement showing that the applicant has never had any authorization to sell securities denied,

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[3]Oklahoma Statutes, Title 71, sec. 2.

suspended or revoked, been the subject of any administrative or judicial determination or injunction concerning the securities business, been convicted of any misdemeanor relating to the securities business, nor been convicted of any felony, either in Oklahoma or any other jurisdiction; any exception to the above must be thoroughly and fully explained;

5. A statement regarding previous authorization, license, or registration to sell securities, giving the jurisdiction of each authorization, and whether or not presently effective;

6. The names and addresses of five personal character references;

7. The names and addresses of five credit references;

8. A photograph taken within the previous six months, and a complete physical description of the applicant.[4]

The application must be signed before a notary public, accompanied by a $10 filing fee and a consent to service of process.

The appointment to consent of service is a document in which the applicant agrees that the Administrator is to receive service on any lawful action, in a non-criminal suit or action, against the applicant within the state of Oklahoma.[5] The consent form must also be signed before a notary public

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[4]Oklahoma Securities Commission Form 202-A, Agents Application, Unpublished.

[5]Oklahoma Securities Commission Form 413-G, Unpublished.

and must remain in effect so long as the broker-dealer does business in Oklahoma.

Under the present law there is actually less information required by statute than there was under the 1931 law. The effect of this requirement is somewhat offset by the provision in the current law which permits the Administrator to require any additional information he deems necessary, inaddition to that required by law. The Blue Sky Law of 1931 required the location of all offices in the state of Oklahoma, style of doing business, names, residences, and business addresses of all officers and directors, general plan and character of doing business, and the length of time the dealer or salesman has been engaged in business. These factors are not explicitly required by the Oklahoma Securities Act of 1959.

The 1959 statute also places a responsibility on the broker-dealer, agent or investment adviser after the license has been granted. Every person granted a license is required to make and to keep for at least three years any accounts, correspondence, memoranda, papers, books, and other records that the Administrator may require.[6] The Blue Sky Law of 1931 did not contain those provisions. In addition, an agent must file all financial reports that the Administrator requires, with a maximum of two per year allowable under the law. The registrant must file an amended

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[6]Oklahoma Statutes, Title 71, sec. 203.

and corrected copy of any report which becomes inaccurate in any material respect.

These follow-up provisions in connection with the registration of broker-dealers, agents and investment advisers make this section more effective than was the Blue Sky Law of 1931. The Administrator has also been given more discretionary power regarding information obtained from people who wish to engage in the securities business in the state of Oklahoma.

Broker-Dealers

A broker-dealer as defined by the Oklahoma Securities Act of 1959 is: ". . . any person engaged in the business of effecting transactions in securities for the account of others or for his own account."[7]

An application for registration as a broker-dealer in Oklahoma requires the following information to be filed with the Administrator:

1. The name of the applicant;

2. The form of ownership to be used by the applicant, i.e., corporation, partnership, association, or individual;

3. The business address of the applicant, and the address of the applicant's principal office in Oklahoma, and the address of all of the applicant's branch office in

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[7] Ibid., sec. 2.

Oklahoma;

4. The name and address of the party in charge of the applicant's business in Oklahoma;

5. A statement concerning the general character of the securities to be offered and sold in Oklahoma and the general plan and character of the business to be transacted;

6. The length of time the applicant has been engaged in such business;

7. A statement regarding membership in any recognized national exchange or security organization, i.e., its membership has been never refused or has applicant been expelled from membership;

8. A statement showing if the applicant is currently registered as a broker-dealer with the Securities and Exchange Commission, a member of the National Association of Securities Dealers or any similar organization, or a member of any securities exchange registered under the Exchange Act of 1934;

9. A statement that neither the applicant nor any person connected with the applicant as an officer, director, partner, member or principal stockholder, i.e., holder of ten per cent or more outstanding shares of any class, has ever been charged with any fraudulent acts in any transactions of any kind or character, been suspended or disbarred from the practice of any profession, been charged with violating any injunction or administrative order,

been convicted of a misdemeanor involving a security or any aspect of the securities business or been convicted of any felony; if any of the foregoing has occurred an explanatory statement must be attached to the application;

10. A statement of the business or employment during the last five years of each officer, director, partner, or member (a detailed discussion of the requirements in this area will immediately follow these requisites);

11. A resolution of the applicant's board of directors authorizing the appointment of the Securities Administrator as its attorney for service of all process;

12. An appointment of the Securities Administrator as applicant's attorney for service of process;

13. A statement listing all unsatisfied judgments and decrees of record in any court and of all litigation pending against the applicant or any of its members or partners, or proprietor;

14. A certified copy of the corporate charter, together with all amendments to date, the statement of partnership or partnership agreement, or other working agreement, whichever is applicable;

15. A true financial statement of the applicant made less than 60 days prior to the date of application and consisting of a balance sheet, profit and loss statement, and an analysis of surplus; the financial statements are subscribed and their correctness; acknowledged

by the president, a partner or member, or the proprietor, and attested by the secretary, if a corporation;

16. A surety bond, properly executed, in the prescribed form, in the penal sum of $10,000.00, the fee of $35 for a broker-dealer license; and

17. A statement that the applicant and its officers, directors, partners, and/or members certifying that they are familiar with the provisions of the Oklahoma Securities Act of 1959, and all rules, regulations and orders issued in connection with the Securities Act, and that they will faithfully abide and obey all laws, rules, regulations and orders now in force or hereafter made or enacted regarding any aspects of the business.[8]

The application must be signed by the president, partner, member, or proprietor and attested to before a notary public.

Requirement ten, in the above listing, pertains to the business and employment record of each officer, director, partner, or member covering the last five years. Information required from each of these principals of the firm includes:

1. The name of the dealer or issuer;

2. The applicant's name, age, and place of birth; business address and residence address;

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[8]Oklahoma Securities Commission Form 202-D, Broker-Dealer Application.

3. The applicant's present occupation or profession;

4. The employment record for the past five years giving employer, address, capacity in which employed, the date employed, and the date terminated;

5. A statement pertaining to ownership of securities in this organization, the kind, amount and percentage of ownership in each class, how the securities were paid for and a full explanation if payment was other than in cash, and an explanation if the payment is not complete;

6. A statement giving full particulars to any agreement, written or otherwise, which existed relating to the acquisition of any additional interest by the applicant;

7. A statement in full disclosing arrangements with the organization regarding compensation -- salary, commission, profit-sharing, bonus, and any other payments made for any purpose within the last three years -- whether directly to you or to any person in whom you have financial interest;

8. A statement regarding the amount of time devoted to the organization's business or affairs and whether or not such activity will be on a full-time or part-time basis;

9. A statement giving full particulars if the applicant has been an officer, director or promoter in any company which has become insolvent, has been convicted of any fraudulent acts in any transactions of any kind or character, been convicted of any misdemeanor involving a security or any aspect of the securities business or of

any felony, or has been declared bankrupt or made an assignment for the benefit of creditors;

10. A statement providing the full particulars if the principal of the firm or the applicant company has ever been the subject of any order entered by any state regulatory or administrative agency, department, or officer, or the Securities and Exchange Commission, or any associations of securities dealers or securities exchanges;

11. A statement setting forth previous related experience, evidence of knowledge of the securities business, and educational background if the principal is to be active in behalf of a securities dealer;

12. The names and addresses of five character references, excluding relatives and associates in this enterprise;

13. The names and addresses of five credit references; and

14. A statement regarding the banking facilities used by the principal during the past five years.[9]

The application for a broker-dealer must be signed by the principal of the firm submitting the application and attested to before a notary public.

The application required of any individual or organization wishing to engage in the securities business in

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[9]Oklahoma Securities Commission Form 302-4.

Oklahoma is quite comprehensive and provides sufficient material concerning the applicant. Information relating to the personal and financial background of the applicant as well as the principals of the firm are required by the Oklahoma Securities Commission.

Investment Adviser

An investment adviser as defined by the Oklahoma Securities Act of 1959 is:

> . . . any person who, for compensation, engages in the business of advising others, either directly or through publications or writing, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or issues or promulgates analyses or reports concerning securities.[10]

The information required to be filed with the Administrator by the applicant for a license as an investment adviser is basically the same information required to obtain a license as a broker-dealer.

Procedure for Registration of Broker-Dealers, Agents, and Investment Advisers

The control mechanism of the Department of Securities is the original licensing procedure, renewals of the license, the minimum capital rule, and the bonding requirements.

Office Procedure

The registration procedure for agents, broker-dealers and investment advisers is relatively simple. A

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[10]Oklahoma Statutes, Title 71, sec. 2.

license may be obtained by filing an application with the Administrator along with a consent of service, the required filing fee, and the correct bond. Upon receipt of an application in the office of the Department of Securities, a secretary checks the application to make sure all the required forms have been submitted and that the application is complete.[11] If there is a deficiency, the applicant is notified and asked to submit whatever is necessary to make the application complete. A receipt to cover the funds submitted in the application covering all fee requirements is issued by the secretary and a folder on the individual is made. The application next is forwarded to the Deputy Administrator who checks the application for completeness and accuracy of information. Particular attention is given to the financial statements of the applicant for compliance with the departmental rules and regulations regarding minimum capital. The minimum capital requirement will be discussed in greater detail later in this chapter. If the application is complete and accurate and meets the requirements of the Department, it is forwarded to the Staff Attorney to check for legal errors or inconsistencies within the application. Checking the corporate charter against the stated purposes of the issue and method of doing business quite often reveals that a company is about to take an action which is in

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[11]Interview with John McNerney, May 11, 1965.

direct contradiction with its corporate charter.[12] As a general rule, it is a simple matter to amend the corporate charter and to bring current operations in conformity with the charter.

After successful completion of the examination required by the Oklahoma Securities Commission and the posting of the correct bond, the individual is licensed to engage in the securities business in Oklahoma.

Testing

The authority for the issuance of administrative rulings was pointed out in Chapter V of this paper. Administrative rule 63-13 deals with the examination and fee requirements in connection with the licensing procedure in Oklahoma.[13] This administrative rule established an integrated examination procedure for agents, investment advisers, and broker-dealers and eliminated a great deal of burdensome duplication which had existed prior to the issuance of this rule.[14] Oklahoma acted as the pilot state in establishing and carrying out the new integrated examination procedure which allows the examinees to take all necessary examinations

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[12]Interview with Jess Maynard, May 19, 1965.

[13]Oklahoma Securities Commission Administrative Rule 63-13.

[14]Fourth Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Oklahoma Legislature (Oklahoma City: Oklahoma Securities Commission, March 27, 1964).

at the same time.

The rule outlines the general examination procedure to be followed and regulates the fee for taking the examination. The examination is divided into two parts and actually is two exams. The first part is a "general securities" examination, testing the applicant's knowledge of the securities business and investments in general. The second part is an examination covering the provisions of the Oklahoma Securities Act.

Administrative rule 63-13 also gives the Administrator the authority to examine orally, or to exempt any class of applicants from the provisions of this rule. The oral examination or the exemption may be taken whenever the Administrator determines the action would be consistent with the intents, purposes and provisions of the Oklahoma Securities Act. Fees required by the rule are $20 each time the examination is taken.

The examination is administered in Oklahoma City twice a month. If an applicant fails either part of the examination, he may retake the portion he did not pass until both parts of the examination have been successfully completed. To repeat a failed portion of the examination, the applicant must wait thirty days. If the same part is failed for the second time, the waiting time is sixty days before the examination can be repeated. There is a ninety-day waiting period after this for each subsequent

examination.[15] Both parts of the examination must be completed successfully, although not necessarily at the same time before the registration is effective. There is no limit to the number of times that the examination or any part of the examination may be taken.

No records are maintained relating to the number of examinations administered in each of the three categories since the start of the testing program. Nor is any information available regarding the number of persons who have passed on the first and subsequent exams.

The Oklahoma Securities Commission provides each applicant with a series of study questions typical of those asked on the examinations covering the Oklahoma law. The National Association of Securities Dealers grade the examinations and notify both the applicant and the Oklahoma Securities Commission of the results of the examination. The issuance of the license is automatic after passage of the examination and the posting of the proper fee.

Capital Requirements

The capital position of the broker-dealers in Oklahoma is covered in administrative rule 64-14.- The Administrator stated that it was in the public interest and for the protection of the investor that a minimum capital rule be installed.[16]

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[15] Interview with Carl Engling, July 8, 1965.

[16] Ibid.

Under the provisions of this administrative rule, the broker-dealer is required to maintain at all times a minimum capital of $10,000.00[17] Section 202(d) of the Oklahoma Securities Act of 1959 gives the Administrator the authority to set a minimum capital for registered broker-dealers and investment advisers. Administrative rule 64-14 applies only to the broker-dealer.

Prior to the institution of rule 64-14, many broker-dealers were unable to respond to damage claims against them. The $10,000.00 bonding requirement covered in administrative rule 59-1, which will be discussed later in this chapter, covers only damages resulting from a violation of the Oklahoma Securities Act of 1959. If there is no violation of the statute, there can be no recovery from the bond. Rule 64-14 was passed to fill an existing void, i.e., a recoverable damage without violation of the Oklahoma Securities Act of 1959.[18] As used within the meaning of this rule, "capital" means the net worth of a broker-dealer, i.e., the excess of total assets over total liabilities, adjusted by:

> 1. Adding unrealized profits (or deducting unrealized losses) in the equity accounts of the broker-dealer;
> 2. Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness

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[17]Oklahoma Securities Commission Administrative Rule 64-14.

[18]Interview with Carl Engling, April 19, 1965.

secured thereby) including, but not limited to:

a. real estate
b. furniture and fixtures
c. professional memberships
d. prepaid rent, insurance and expenses
e. goodwill and organization expenses
f. all unsecured advances, loans, notes and accounts

3. Deducting the percentages specified below from the market value of all securities, long and short:

a. in the case of non-convertible debt securities having a fixed maturity date which are not in default, if the market value is not more than 5% below the face value, the deduction shall be 5% of such market value; if the market value is more than 5% but not more than 30% below the face value, the deduction shall be a percentage of the market value, equal to the percentage by which the market value is below the face value; and if the market value is 30% or more below the face value, such deduction shall be 30%;
b. in the case of cumulative, non-convertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be 20%;
c. on all other securities, the deduction shall be 30%;

4. Deducting in the case of a broker-dealer who is a sole proprietor the excess of (a) liabilities which have not been incurred in the course of business as a broker-dealer over (b) assets not used in that business.[19]

The effect of this rule is to force the broker-dealer to maintain a balance of $10,000.00 in cash or near cash items over the total liabilities which he has incurred. The effective date of this rule was February 3, 1964.

Bonding Requirements

Bonding requirements for agents, investment advisers

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[19]Oklahoma Securities Commission, Administrative Rule 64-14.

and broker-dealers are set forth in a rather general manner in the statutes. Section 202(e) of the Oklahoma Securities Act of 1959 deals with the bonds required of broker-dealers, agents and investment advisers registered under the provisions of this act.[20] The statute merely states that the bond required shall not exceed $10,000.00 with no mention of specific amounts for the different groups of individuals. More specific provisions are to be found in administrative rules 59-1, 59-2 and 60-8.

Administrative rule 59-1, "bonding requirement," establishes bond requirements for agents, investment advisers and broker-dealers. An agent, by definition within the statute, is an individual who represents a broker-dealer; thus, the broker-dealer is responsible for the actions of the agent.[21] The agent, being an employee of the broker-dealer is treated differently in the terms of the bond requirements. Administrative rule 59-1 requires broker-dealers and investment advisers to post a $10,000.00 bond and agents to post a $2,000.00.[22] The effective date of the ruling was August 14, 1959. Any individual in the state, registered in any of these categories when the rule was passed, was given approximately thirty days within which to comply or to have his registration cancelled.

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[20]Oklahoma Statutes, Title 71, sec. 202.

[21]Oklahoma Statutes, Title 71, sec. 2b.

[22]Oklahoma Securities Commission, Administrative Rule 59-1.

As was indicated in the previous section of this paper, Section 202(e) of the Oklahoma Securities Act of 1959 requires the posting of a security bond by broker-dealers, agents and investment advisers. This same section of the statute provides an alternative to those individuals in fulfilling this bonding requirement. The statute states "any appropriate deposit of cash or securities shall be accepted in lieu of any such bond."[23] Administrative rule 59-2 clarifies those securities which will be accepted in lieu of the bonding requirement.[24] "Appropriate deposits" in lieu of a bond deemed acceptable by the Administrator are securities of the United States or any municipality within the United States. These securities, however, must be guaranteed as to both principal and interest and recognized by the issuer as a binding obligation of the issuer. In addition, the market value, as of the date of deposit, must be equal to 125 per cent of the amount of the bond required in rule 59-1. The effective date of this rule was September 3, 1959.

Administrative rule 60-8 is merely an extension and a refinement of the previously issued administrative rules relating to the bonding requirements of broker-dealers. Rule 60-8 allows the issuer or broker-dealer to file as a

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[23]Oklahoma Statutes, Title 71, sec. 202(e).

[24]Oklahoma Securities Commission Administrative Rule 59-2.

condition of registration a blanket bond covering all agents of the principal.[25] This bond covers all agents currently employed and all subsequently employed by the principal, with the required $2,000.00 bond. Thus, a firm is allowed to take out one bond covering many agents, as opposed to the single bond for each individual employee. If the individuals involved, however, want to file individual bonds they may do so. The effective date of this administrative rule was December 15, 1960.

Renewal

The renewal of licenses is a routine matter with the Department of Securities unless the applicant fails, in some specific way, to qualify. If, however, the proper amount of bond is posted, and the minimum capital rule of administrative rule 64-14 has been satisfied, renewal of the license is an automatic procedure.

There are no periodic checks upon the licensed agents, investment advisers and broker-dealers in the state of Oklahoma. An investigation is made when allegations have been made by some individual or agency charging a violation or irregularity of some type. Investigations are also instigated by requests from out-of-state agencies. There is, however, no continuing control mechanism established for individuals in the securities business in Oklahoma.

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[25]Oklahoma Securities Commission Administrative Rule 60-8.

Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration

The Securities Administrator is given rather broad powers in connection with the suspension of registration privileges. He may suspend an individual if he finds that the order is in the public interest or if he finds that the applicant or registrant:

1. Has filed an application which is incomplete in any material respect, or contained any statement which was false or misleading in any material respect;

2. Has willfully violated or failed to comply with any provision of the act;

3. Has been convicted in the last ten years of any misdemeanor involving a security or any aspect of the securities industry, or any felony;

4. Is permanently or temporarily enjoined by any court from engaging in or conducting any practice involving any aspect of the securities industry;

5. Is the subject of an order from the Administrator suspending his right to a license in this state;

6. Is the subject of an order within the past five years by the Securities Administrator of any state or by the Securities and Exchange Commission revoking the registration, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities association;

7. Has engaged in any dishonest or unethical practices in the securities business;

8. Is insolvent;

9. Is not qualified on the basis of such factors as training, experience, and knowledge;

10. Has failed to exercise reasonable supervision of his agents or his employees;

11. Has failed to pay the proper filing fee;

12. Has not lived in this state for at least one year, if he offering a security registered by qualification.[26]

The authority of the Administrator under the Oklahoma Securities Act of 1959 is much broader and yet more closely defined than it was under the Blue Sky Law of 1951. The right to suspend because an individual is not qualified was not found in the 1951 statute. This power gives the Administrator rather broad and discretionary power; however, he is limited by the statute itself when it sets out what is to be used in ascertaining whether or not an individual is qualified.

The Administrator may, by order, postpone or suspend registration of any type under this act pending the final determination of any proceeding under this section. The Administrator must notify the party involved and his employer

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[26]Oklahoma Statutes, Title 71, sec. 204.

and state the reasons for the order. The applicant has the right to a hearing, and one will be granted within fifteen days after he requests it. If he does not request a hearing and the Administrator does not order one, the order remains in effect until the Administrator modifies it or dismisses it.

The Administrator may cancel the registration of any applicant or registrant if: he is deceased; he is no longer doing business as a broker-dealer, agent, or investment adviser; he has been adjudged mentally incompetent; he is subject to the control of a committee, conservator, or guardian; or he cannot be located after a reasonable search.

Any individual may withdraw his registration at any time he so chooses, and it becomes effective thirty days after the date of withdrawal.

Summary of Licenses Issued

Table 3 indicates the number of individuals licensed by the Oklahoma Securities Commission to engage in the securities business in Oklahoma at the end of each year. As of December 31, 1960, there were a total of 1,024 people licensed. Of these, 8.8 per cent were licensed as broker-dealers, 90.8 per cent were licensed as agents, and .4 per cent were licensed as investment advisers. Total registrations for 1960-1964 have approximately this same distribution. Broker-dealers as a percentage of the total have declined from 1960 to 1964 but still compose 6.3 per cent of the total registration. Total agent registrations have varied between

TABLE 3

BROKER-DEALERS, AGENTS, AND INVESTMENT ADVISERS REGISTERED WITH THE OKLAHOMA SECURITIES COMMISSION AT THE END OF THE YEAR 1960-1964

Year	Broker-Dealers	Agents	Investment Advisers	Total
1960	90	930	4	1,024
1961	107	1,394	7	1,508
1962	131	1,460	9	1,600
1963	132	1,538	10	1,680
1964	108	1,610	8	1,726

Source: 1964 Oklahoma Securities Commission Annual Report to the Governor and Members of the Legislature, p. 9.

90.8 per cent in 1960 to 93.3 per cent in 1964 when expressed as per cents of the total for each year.

Total registrations increased by 47.3 per cent between 1960 and 1961. However, since that time the increases each year have been in the vicinity of 5 per cent. The increase in total registrations in 1964 was only 2.7 per cent.

The total registration figures for 1965 will be available after the release of the Oklahoma Securities Commission Annual Report to the Governor and Members of the Legislature.

CHAPTER VII

REGULATION AND CONTROL OF SECURITIES

Types of Registration

The Oklahoma Securities Commission exercises greater control over securities, both before and after their registration than over the licensing of agents, broker-dealers and investment advisers.

In the registration of securities more rigid requirements are encountered in the registration process, and the continuing examination of registered companies is more pronounced than is required for broker-dealers, agents and investment advisers. As was indicated in Chapter IV of this paper, registration of securities can be accomplished by notification, coordination, or qualification.

Registration by Notification

One method of registration available to an issuer is notification. Companies who meet the standards set out in the statutes are eligible for this type of registration. Corporations in this category are usually well established and financially solid corporations.

Under the provisions of the Oklahoma Securities Act of 1959, the following securities are eligible for registration by notification:

> 1. Any securities whose issuer and any predecessors have been in continuous operation for at least five years if (a) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividend, or in any security of the issuer with a fixed maturity, dividend, or interest payment, and (b) the issuer and any predecessors determined in accordance with generally accepted accounting practices; (i) which are applicable to all securities without a fixed maturity, interest or dividend provision equal to at least five per cent of the amount of such outstanding securities, or (ii) if the issuer has not had securities of the type in (i) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not registered in this state) are issued;
>
> 2. Any securities (other than a certificate of interest or participation in an oil, gas, or mining title or lease) registered for non-issuer distribution of (a) any securities of the same has ever been registered under this act or a predecessor act, or (b) the securities being registered was originally issued pursuant to an exemption under this act or a predecessor act.[1]

A large portion of the Blue Sky Law of 1931 was devoted to debt obligations in the portion of the law realizing registration by notification. Especially prominent were the mentions made of real estate obligations. Real estate securities are noticeably absent from the current provisions of the law. The previous law was also more explicit in some of the quantitative features of any securities registered under this section. The setting of minimum

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[1]Oklahoma Statutes, Title 71, sec. 302.

standards under the earlier statute for times interest-earned figures have been deleted from the current law. The statute is written a more general fashion with the removal of the minimum figures, merely requiring no default in interest, dividend, or maturity payments.

An issue registered by notification must file a registration statement. The applicant must provide the Oklahoma Securities Commission the following information:

1. Name and address of the applicant;

2. Statement telling if the application is issuer, a registered broker-delaer, or any other person on whose behalf the securities are to be offered;

3. Issuer's name, address of principal business office, and address of principal branch office in Oklahoma;

4. If issuer is corporation, the state in which incorporated;

5. The class and amount of securities to be offered for sale;

6. Maximum offering price per unit and the number of securities to be offered in Oklahoma;

7. Maximum aggregate offering price of securities to be offered in Oklahoma;

8. Amount and rate of commission to be paid per unit;

9. A statement regarding how many years the issuer has been in continuous operation;

10. A statement regarding any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or by the Securities and Exchange Commission;

11. A statement of earnings, demonstrating eligibility for registration by notification; these eligibility requirements will be discussed in detail later in this chapter;

12. A description of issuer and any significant subsidiary, and for any person of whose behalf any part of the offering is to be made, his name, and address, the amount of securities of issuer held as of the date of filing the application, and a statement of his reasons for making the offering;

13. Financial statement of issuer and any significant subsidiary prepared not more than four months prior to the date of application;

14. The balance sheets and income statements for issuer and any significant subsidiary for the two fiscal years preceding the year of filing, accompanied by an opinion of an independent certified public accountant or an independent public accountant covering the financial statements;

15. A specimen or copy of the security to be registered;

16. Copy of any prospectus, pamphlet, circular,

form letter, advertisement, or other sales literature intended to be used in connection with the proposed offering;

17. Opinion as to validity and legality of the security, furnished by competent legal counsel, not an officer or director of the issuer;

18. An irrevocable consent to service of process in Oklahoma and a resolution of the applicant's board of directors;

19. The written consent of any attorney, accountant, appraiser, or other person who is named as having prepared or certified a report or valuation, which is used in connection with the application;

20. Statement of all estimated expenses of offering;

21. Names and addresses of underwriters;

22. A specific description of the plan of offering;

23. A list of options granted or to be granted, or any agreement to issue stock for other than cash; and

24. The proper filing fee;[2]

The consent to service of process and the resolution of the board of directors are the same documents required and discussed under the licensing procedure for broker-dealers.

The registration statement under this section automatically becomes effective at 2:00 p.m. central standard time on the second full business day after the filing of the

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[2]Oklahoma Statutes, Title 71, sec. 302; and Oklahoma Securities Commission Form 303.

registration statement, if no stop order is issued or in effect.

Registration by Coordination

The Securities Act of 1959 allows registration by coordination for the first time in Oklahoma. This new method of registering an issue allows a company to avoid duplication of effort by coordinating its registration with the other state and/or federal agencies. Any securities with a registration statement filed under the Securities Act of 1933 may be registered by coordination with the Oklahoma Securities Commission. The following information is required by the Oklahoma Securities Commission in connection with a registration by coordination:

1. The name and address of the applicant;

2. A statement showing whether the applicant is the issuer, a registered broker-dealer, or another person on whose behalf the securities will be offered;

3. Name and address of issuers principal business office;

4. Location of principal branch office in Oklahoma;

5. A statement if issuer is a corporation, and what state incorporated in;

6. Class and amount of securities to be offered;

7. Maximum offering price per security and number of securities to be offered in Oklahoma;

8. A statement regarding the states in which a

registration statement or similar document in connection with the offering has been or is to be filed;

9. Maximum aggregate offering price of securities to be offered in Oklahoma;

10. Amount and rate of commission to be paid per unit;

11. A statement regarding any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in any state or by any court or by the Securities and Exchange Commission;

12. One copy of the registration statement filed under the Securities Act of 1933, and two (2) copies of the prospectus, together with all amendments as of filing date;

13. One copy of the articles of incorporation and by-laws of issuer, or their equivalent currently in effect;

14. A specimen or copy of security to be registered;

15. Consent to service of process in Oklahoma;

16. Resolution of issuer's board of directors;

17. The name of an Oklahoma broker-dealer; and

18. The proper filing fee in connection with the registration.[3]

The application must be signed by the applicant for registration before a notary public.

Any registration statement filed under this section

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[3]Oklahoma Statutes, Title 71, sec. 303 and Oklahoma Securities Commission Form 303.

automatically becomes effective at the same time the federal registration statement becomes effective if there is no stop order in effect, all necessary requirements have been met, the registration statement has been on file for at least ten days, and a statement regarding maximum and minimum offering prices has been on file for at least two business days.

The burden of notifying the Securities Administrator that the federal registration statement has been approved by the Securities and Exchange Commission is placed on the registrant. This can be done by either telephone or telegraph.

Registration by Qualification

Registration by qualification is the most widely used method of registration in the state of Oklahoma. Securities not registered by either notification or coordination must be registered by qualification, and any security may be registered in this manner. Registration by qualification requires that the applicant meet the minimum standards established in the statutes for filing by this method. The Oklahoma Securities Commission requires the following information and documents for registration by qualification:

1. The issuer's name, address and form of organization; state of foreign jurisdiction and date of organization; general character and location of its business, description of physical property and equipment; and a

statement of the general competitive conditions in the industry or business in which it is or will be engaged;

2. The name, address, and occupation for the past five years of every director and officer of the issuer; the amount of securities of the issuer held by him as of a certain date within 30 days of the date of the registration statement; the amount of securities being registered to which he has subscribed;

3. The salaries of all officers and directors during the past 12 months and predicted for the next 12 months;

4. Any person owning 10 per cent or more of the outstanding shares, the same information as in No. 2 above;

5. If the issuer was organized within the last three years, the same information as in No. 2 with respect to every promoter of the issue; any amount paid to him and option or options extended or other benefits within that period or intended to be paid to him, and the consideration for any such payment;

6. In regard to any person on whose behalf any part of the offering is made in a non-issuer distribution: name and address; amount of the securities of the issuer held by him on the date of the registration statement; a description of any material interest in any transaction with the issuer within the past three years; and a statement of his reasons for making this offering;

7. Current and pro forma capitalization and long-term debt of the issuer and subsidiaries, including a description of each security outstanding or being registered or other wise offered, and a statement of the amount and kind of consideration for which the issuer and/or subsidiary has issued any securities within the past two years or is obligated to issue any of its securities;

8. The kind and amount of the securities to be offered; proposed offering price or the method by which it is to be computed; basis upon which the offering is to be made if other than for each cash; estimated underwriting and selling discounts or commissions and finders fees; the estimated amounts of other selling expenses including legal, engineering and accounting charges, names and addresses of every underwriter and every recipient of a finers fee, a copy of any underwriting or selling-group agreement, and a description of the plan of distribution of any securities which are tobe offered other than through an underwriter;

9. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; and the

order of priority in which the proceeds will be used for the purposes stated;

10. A description of any stock options or other securities option outstanding or to be created in connection with the offering;

11. The dates, parties to, and general effect briefly stated of every management of material contract made or to be made other than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement, or if it was made within the past two years;

12. A copy of any prospectus, pamphlet, circular, letter, advertisement, or other sales literature intended to be used in connection with the offering;

13. A copy of the security being registered; a copy of the issuer's articles of incorporation and by-laws; and a copy of any indenture or other instrument covering the security to be registered;

14. An opinion of counsel as to the legality of the securities being registered, stating whether the securities when sold will be legally issued, fully paid and non-assessable, and if a debt security, a binding obligation of the issuer;

15. The written consent of any accountant, engineer, or appraiser, or any other person whose profession gives authority to a statement made by him;

16. The balance sheet of the issuer dated within four months prior to the registration statement date; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for the period between the last fiscal year and the date of the balance sheet; and

17. Such additional information as the Administrator requires by rule or order.[4]

A registration statement under this section becomes effective upon the order of the Administrator.

Perhaps the most crucial document to be filed in connection with the application for registration by qualification is the prospectus.[5] Only one application for registration of securities during the fiscal year 1964 was

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[4]Oklahoma Statutes, Title 71, sec. 304.

[5]Interview with Carl Engling, June 7, 1965.

approved as it was originally submitted, i.e., without having to return it to the applicant for corrections, and the most commonly recurring problem was the prospectus.[6]

The prospectus is the principal instrument through which the general public obtains information regarding securities being offered for sale. The purpose is to get complete and accurate information to the investing public, consistent with the spirit of the Oklahoma Securities Act.[7] A publication of the Oklahoma Securities Commission sets out these general guidelines to be followed when compiling the prospectus:

> The offering circular should set forth information in a clear, concise, understandable manner, free of unnecessary and irrelevant details or techical language.
> The following will be deleted:
> 1. References to other companies, not affiliates of the issuer, by way of comparison or in any other manner;
> 2. "Puffing" of the issuer's history or of official's backgrounds;
> 3. Use of colors, eye-catching designs and pictures;
> 4. Any subject matter which goes further than a fair and factual presentation necessary to disclose the material facts.[8]

The form suggested by the Oklahoma Securities Commission in compiling the prospectus and the information required under each item includes:

1. On the front page of the prospectus the name of

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[6]Interview with Carl Engling, June 7, 1965.

[7]Ibid.

[8]General Information Regarding the Offering Circular, Oklahoma Securities Commission, Oklahoma.

the company, number of shares and par value if capital stock or total amount and face amount per unit if debt securities, a statement that the securities are offered under a permit which is permissive in nature and does not constitute a recommendation or endorsement of the Oklahoma Securities Commission, the offering price in dollars per unit or share, a statement that: THESE ARE SPECULATIVE SECURITIES, a statement concerning the commission to be paid on shares sold 9 commissions in excess of fifteen per cent of the offering price will not be approved, if an underwriting agreement has been entered into with a dealer, a synopsis of the agreement, a list of all the dealers authorized to distribute the offering, the name and address of the transfer agent, the name and address of the issuer company, and the date of the offering circular;

2. On the second page of the prospectus a table of contents with a statement preceding the table of contents, "THIS PROSPECTUS DOES NOT CONSTITUTE AN OFFERING IN ANY STATE WHERE THE OFFERING IS AUTHORIZED."

3. A table of contents which must contain all of the following items;

4. A statement pertaining to the principal purposes for which the net proceeds to the registrant from the securities to be offered are intended to be used, and the approximate amount to be used for each such purpose, and the order of priority in which they will be applied;

5. A statement showing the cost of equity shares held by the organization. If the registrant was organized within the last five years, the applicant must show the cost per share to officers, directors, promoters, managers or other officials, of any equity share held, and of any other person holding ten per cent or more of any class of the company's equity securities;

A detailed description of any consideration other than cash that was used as payment for the above securities, stating net cost of the assets to the transferrer, the value given at the time of the transfer, and the basis for the valuation, must be included;

With respect to any asset to be acquired from any officer, director, manager, or any other person holding ten per cent of any one class of securities, state the net cost in the hands of the holders on date of transfer, and give the cost to the company;

6. A brief statement setting out the plan of distribution of any securities being registered which are to be offered otherwise than through underwriter, must be included;

If the securities are to be offered through underwriters, state the name and address of the principal underwriters; the respective amounts to be underwritten; give briefly the underwriters' obligations to take the securities and describe any relationship of the underwriters to the

registrant;

Also required is a statement showing the cash discounts or commissions to be allowed or paid to dealers, and a full description of any consideration other than cash to be used in settlement of the distribution costs;

7. A statement giving all the securities of each authorized class composing the capital structure of the issuer and title or class of securities, the amount authorized, amount outstanding on the date of the balance sheet submitted with the registration application and the amount to be outstanding if all registered securities are sold;

Include the following information on any unpaid subscriptions to capital stock, or other securities as of the date of the most recent balance sheet: the dates of the subscriptions contracts, the total shares or units subscribed for but not issued, the amount paid on subscribed shares or units, and the amount collectible on unpaid subscriptions;

Also required is a brief description of any surplus debentures or certificates, bonded or funded debt, mortgages, or any other long-term debt, stating for each class of debt the interest rate, method of retirement, sinking fund provisions, pledged assets, interest or principal in arrears or default;

8. A statement giving a summary of earnings with an introductory paragraph identifying the persons who have prepared the summaries of operations included in the

prospectus must also be included;

In summary only and comparative columnar form, furnish operating statements for each of the last three years (for the life of the registrant and its immediate predecessors, if less) showing profit or loss before and after federal taxes. All adjustments necessary to present with this material in comparable form under generally accepted accounting principles must have been. Include a statement to this effect in this summary. Conclude the statement by showing earnings for each year applicable to common stock, both on gross and per share basis;

If the company has had no earnings, that must be stated in this section, together with a statement that the company cannot estimate that it will have earnings in the future or the amount of such earnings;

9. A statement of the organization and its affiliates providing the date and type of organization or incorporation of the registrant and the state in which organized. If the registrant is a parent organization, an affiliate, or a subsidiary, include a chart to show by percentage the companies controlled or controlling;

If any securities are being offered for the account of stockholders, or other security holders, name each holder and state the amount of securities owned by him and the amount to be offered for his account, and his reasons for offering the securities;

If the registrant was organized with the past five years, state the names of the promoters, the nature and amount of securities owned by him and the amount to be offered for his account, and his reasons for offering the securities;

If the registrant was organized within the past five years, state the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter directly or indirectly from the registrant, and the nature and amount of any assets, services or other consideration therefore received or to be received by the registrant;

Make a statement with respect to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the principle is to be determined. Identify the persons making the determination and state their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within three years prior to their transfer to the registrant, state the cost thereof to the promoter;

10. Based on current and operations, briefly describe in narrative form the material particulars of the following subjects as they may have applied to your business. Brief factual analysis, comparisons and financial summaries are not objectionable if included are:

(a) actual business done and intended to be done (not powers and objects specified in charter);

(b) special or technical considerations of your particular business;

(c) regulation applicable to your business;

(d) the general nature and extent of competitive conditions in the industry in which the company is engaged. If several products are involved, separate consideration should be given to the principal products or services;

(e) nature and extent of your market;

(f) investments owned by your company;

(g) surplus and special surplus reserves;

(h) bankruptcy, receivership or similar proceedings with respect to registrant;

(i) insurance companies - explain briefly the types of insurance written, re-insurance contracts, states in which you are licnesed to sell insurance. In tabular form, cover the following items for the three years covered by the financial statements: premium income, insurance in force at end of year, premium income, underwriting expenses, reserves, and lapse ratios;

11. A statement describing briefly the location and general character of the principal plants, mines, and other general physical properties of the registrant, setting forth any major encumberances. If not held in fee, describe how the property is held;

If the registrant leases its plant, office or other physical properties, disclose briefly the terms of such lease;

12. A description of any legal proceedings of a material nature, other than litigation incidental to your business, that is in process or pending. Include an opinion of counsel setting forth the probable extent of the liability in each case. Given this, provide similar information for any such proceedings known to be contemplated by the governmental authorities;

13. A description of the securities being registered;

If capital stock is being registered, give the title of the class and outline briefly the dividend rights or preferences, voting rights, liquidation rights, pre-emptive rights, conversion rights, redemption provisions, sinking fund provisions, and liability to further assessment;

If any new class of securities is to be created by this offering, describe any limitation or qualification of the rights of the securities being offered by the rights of any other class of securities;

Describe any long-term debt being registered, including surplus-raising instruments, particularly with respect to the following provisions: interest, maturity, conversion, redemption, amortization, sinking fund, and retirement;

Describe also any other material provisions,

presenting all of the above in language that is non-technical, easily understandable;

14. Make a brief statement showing an intention to report annually to the stockholders of the issuer;

A statement should be made giving the date for the end of the fiscal year and stating that an annual report be prepared and certified by an independent certified public accountant or independent public accountant will be sent to the shareholders each year after the close of the fiscal year;

15. Include a description of the directors, executives, and officers of the issuer, showing the full names and business addresses of all executive officers and directors of the registrant and all persons chosen to become officers and directors. Indicate positions or offices with the registrant and the principal occupations during the past five years of each executive officer. Do not include civic, religious or social affiliations or superfluous adjectives regarding background;

16. A statement setting out the remuneration of officers and directors of the issuer. Include a statement providing information regarding the remuneration paid by the registrant and its subsidiaries during the registrant's last fiscal year for services in all capacities for each director and officer whose aggregate direct remuneration exceeded $12,000.00, naming each person, and an aggregate figure for all directors and officers of the registrant without naming

them;

17. A statement regarding principal holders of equity securities of the issuer, listing each person who owns more than ten per cent of any class of such securities, type of ownership, i.e., of record, or beneficially, or both, the amount owned, the per cent of class owned, and the per cent of ownership if all registered securities are sold;

18. In a statement, provide the following information on any options, warrants, or rights to purchase securities from the registrant or any of its subsidiaries which are outstanding as of a specified date within ninety days prior to the date of filing;

Describe the options, warrants, or rights, stating the material provisions including the consideration received and to be received for such, and the market value of the securities called for or the granting date;

Provide the title and amount of securities called for by such options, warrants, or rights; the purchase price of the securities called for and the expiration dates of such actions, warrants, rights or options; and the market value of the securities called for as of the latest practicable date, giving the source of the quotations or transactions establishing the market value;

Furnish separately the final information called for in the preceding paragraph for any warrants, rights or

options held by each officer or director, naming them and giving their titles;

19. A brief statement describing any material transaction between the registrant and the persons named below during the past three years, and state any proposed transaction to which the registrant and any of these persons was or is to be a party:

(a) any officer or director of the registrant;

(b) any voting trust controlling ten per cent or more of any class of the registrant's equity securities;

(c) any person owning in any manner ten per cent or more of any class of the registrant's securities;

(d) any person with whom any of the foregoing had a material relationship, other than the registrant, or its affiliates;

(e) any affiliate of the registrant, not a subsidiary.

Describe any such transaction whereby assets were bought, sold, or exchanged between any person listed above, and the registrant in the last two years;

20. A signed or conformed copy of the opinion of counsel, as to the legality of the security being registered, stating whether the security will be legally issued, fully paid and non-assessable, and if a debt security, a binding obligation of the issuer must be included;

List any other experts, such as public accountants,

actuaries, etc., whose certificates, statements or reviews have been relied on in preparation or presentation of material used in the offering circular or registration statement;

Reproduce the statement of the public accountant in certification of the financial statements;

21. The complete detailed statements required to appear in the prospectus are as follows:

A balance sheet of the issuer of a date within four months prior to the filing of this registration statement; a profit and loss statement and analysis of surplus for each of the three years before the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors existence if less than three years; if part of the proceeds of the offering is to be applied to purchase any business, the same financial statements which would be required if that business were the registrant;

When the registrant has been organized in its present form for less than eighteen months, a statement should be presented in addition to the conventional balance sheet, income statement and analysis of surplus detailing all organization expenses shown in the balance sheet and previously amortized. There must also be submitted a complete breakdown of assets, tangible and intangible, acquired in exchange for securities, including the number of shares issued, the price per share, and the valuation of each asset

transferred, together with a complete statement of the method by which the valuation was computed;

Financial statements must be of such form and content so as to present fairly the financial position of the registrant on balance sheet dates, and the balance sheet and related schedules, statements of income and surplus shall present the results of the company's operations for the various fiscal years, in conformity with generally accepted accounting principles applied on a basis consistent with that of each respective preceding year;

The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent as to any person or any of its parents or subsidiaries in whom he has, or had during the period report, any material direct or indirect financial interest, or with whom he is, or was during such period, connected as a promoter, underwriter, voting trustee, director, officer, or employee;

22. The original of the subscription agreement and receipt must be a part of the prospectus. The copies to be kept by agents and the company may be in the form of tear sheets to be removed from the prospectus.[9]

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[9] Ibid.

Administrative Rules

The Administrator has issued several rules in connection with the registration of securities.[10]

Administrative rule 60-6 specifically forbids the solicitation of offers or sales of any securities registered under the Oklahoma Securities Act of 1959 unless at the time of the original solicitation, or immediately thereafter, a prospectus is furnished the prospective security holder. The information contained in the prospectus is prescribed by the Administrator. Prior to issuance, the prospectus must have been filed with and approved by him. The form of the prospectus was previously discussed in this chapter.

Specifically exempt from the provisions of rule 60-6 are all securities exempted under the provisions of the Oklahoma Securities Act and all non-issuer distributions.[11] The effective date of the rule was March 24, 1960.

Rule 60-7 is entitled "material changes" and deals with major changes in the registered corporation. It requires that the Administrator be notified immediately of any material changes in the corporation. Prior to the issuance of this rule, a corporation could make any and all alterations it desired with no restrictions or sanctions placed

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[10] Oklahoma Securities Commission Administrative Rules (Oklahoma City: Oklahoma Securities Commission).

[11] A non-issuer distribution as defined by the Oklahoma Statutes, Title 71, sec. 2(h) is any distribution of securities not directly or indirectly for the benefit of the issuer.

against the securities of that corporation. This practice meant that changes could be made in management or in the basic purposes of the corporation without the knowledge of the company's security holders. Rule 60-7 specifically requires all registrants and applicants to notify the Administrator of any and all material changes in the corporation. Listed as changes to be construed as "material" within the context of this rule are any changes in:

1. Management personnel;
2. Principal holders of equity securities, i.e., 10% or more of any one class;
3. Objectives or aims of the organization;
4. Business address of any registrant other than an agent; and
5. Home address in the case of an agent.[12]

Exempt from the provisions of rule 60-7 are both open-end and closed-end investment companies insofar as changes in their investment portfolio are concerned so long as the specified investment policies and objectives remain unchanged. The effective date of this rule was July 19, 1960.

Rule 61-9 is entitled "Waiver of reporting requirements" and applies to those companies which sell their entire issue of securities in less than one year's time after it is registered. The rule exempts these corporations from the riling of financial statements semi-annually.

Companies eligible for the provisions of rule 61-9 must be included in at least one of these categories:

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[12]Oklahoma Securities Commission Administrative Rule 60-7.

1. Any company whose securities are listed or approved for listing on an exchange registered under the Securities Exchange Act of 1934;
2. Any security senior in rank or equal to a security which is previously listed on one of the aforementioned exchanges; and
3. Any non-issuer distribution of an outstanding security.[13]

Companies that fall into any of these categories are specifically exempt from the filing of subsequent and continuing financial reports by the issuer, as do those corporations who have not sold their entire issue. The effective date of this rule was April 14, 1961.

Rule 61-10 entitled "exemption of national exchanges," clarifies those exchanges which comply with the "exemptions" section, i.e., Section 401 of the Oklahoma Securities Act of 1959. The statute in Section 401(a) (8) of the Oklahoma Securities Act of 1959 states:

> Any security listed or approved for listing upon notice of issuance on the New York Exchange, the American Stock Exchange, the Midwest Stock Exchange, or any other national securities exchange which is registered under the Securities Exchange Act of 1934 and which the administrator designates by order may be exempt from the provisions of this Act.[14]

Administrative rule 61-10 removes the necessity for approval by the Administrator of any security listed on national securities exchanges registered under the provisions of the Securities Exchange Act of 1934. The effective date of the rule was May 1, 1961.

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[13]Oklahoma Securities Commission Administrative Rule 61-9.

[14]Oklahoma Statutes, Title 71, sec. 401.

Administrative rule 61-11 is entitled "limitations of sales commissions and expenses." This rule is a result of excessive sales commissions paid by some investors and unnecessary expenses which were being incurred in connection with the issuance of securities.[15]

The Administrator in rule 61-11 limited the amount of sales commissions to fifteen per cent of the offering price of securities actually sold by an applicant for registration. Pledges to purchase a certain amount of a new issue are not considered to be securities actually sold.

An additional five per cent of the public offering price of securities sold may be used to defray the actual expenses involved in a public offering. These sales expenses, however, are limited to the following:

1. Advertising directly associated with the sale of the public offering being registered;

2. Attorney's fees for services in connection with the issue and sale of the securities and their qualification for sale under applicable laws and regulations;

3. The cost of prospectices, circulars, and other documents required to comply with such laws and regulations;

4. Other expenses directly incurred in connection with such qualifications and compliance with such laws and regulations (filing fees and investigative fees prior to regulation);

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[15]Interview with Carl Engling, June 4, 1965.

5. Cost of authorizing and preparing the securities and documents relating thereto, including issued taxes and stamps; and

6. Charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, and of engineers, appraisers, and other experts.

The effective date of this rule was August 31, 1961.

Administrative rule 63-12 is entitled "evaluation of assets" and was necessitated by continuous and excessive abuses in the valuation of assets on financial statements filed with applications for registration. The following rules apply in presenting assets' values in all financial statements filed with the Administrator:

1. A unilateral "write-up" of assets above historical costs is not considered in accordance with generally accepted accounting principles. Financial statements filed by registrants containing a "write-up" of assets to appraisal value (irrespective of the soundness of the appraisal) cannot be accepted;

2. In the case of the registrant acquiring assets in an "arms-length" transaction, solely or partly for its own capital stock, the transaction should be recorded in its financial statements at either (a) the fair market value of the shares of capital given in consideration or, (b) the fair market value of the assets so acquired. The amount selected should be the one which has the preponderance of

evidence substantiating its selection;

3. Where a parent company (one owning more than fifty per cent of other companies) or a subsidiary company or an affiliated company is the registrant, then the consolidated or combined financial statements must be submitted. The consolidated statements must conform to generally accepted accounting principles and result in the elimination of "write-ups" or appraisal amounts not represented by "arms-length" transactions;

4. Where the "promoters" of a registrant have transferred assets to it solely or partly for capital stock, then the tests referred to in (1) - (2) and (3) must be applied to it so as to result in either no "write-up" or one not greater than would have resulted from a transaction carried out at "arms-length." The registrant shall make full disclosure of all pertinent facts and substantiate the values used in its financial statements if not representing the "historical cost" of acquisition from third parties;

5. In the case of a new company not having a past record of operations and none of the factors stated in (1) - (2) - (3) and (4) apply or cannot be applied, then the registrant may, at its option, file its statement in the manner prescribed by the Securities and Exchange Commission for the use of Forms S-2 and S-3. Full disclosure of the facts and circumstances relied upon by the registrant for adopting such forms shall be furnished. The

Administrator will pass upon whether the adoption of the forms referred to are appropriate in the circumstances.

The approach taken by the Administrator in the issuance of this rule is certainly one of conservatism as opposed to some of the more liberal avenues available to the registrant in the evaluation of assets. The effective date of this rule was March 1, 1963.

Section 306 (a) (1) (2) (f) of the Oklahoma Securities Act of 1959 gives the Administrator the authority to issue a stop order, to suspend, or to revoke any registration statement if he finds that the offering has been made with unreasonable amounts or kinds of options. Administrative rule 64-15, "promoters and organizers," evolved from complaints to the Administrator, and observations made by the Department of Securities staff employees that on many occasions promoters received a substantial block of stock without making a tangible contribution to the business.[16] After several instances in which promoters and/or organizers had realized unreasonable profits when there had been no equity contributions by them, the Administrator issued this administrative rule. The rule was issued in the public interest to protect those individuals who do make financial contributions to the new ventures.

Rule 64-15 states that when an issuer is in the

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[16]Oklahoma Securities Commission Administrative Rule 64-15.

promotional, exploratory, or developmental stage, the ratio of equity investment by promoters or "insiders" must be reasonable and equitable in the light of the facts and circumstances present in that particular case. In all instances where the fair market value of the equity contribution of insiders is less than ten per cent of the total offering, the offering would be "discouraged." In those instances, the issuer will have the burden of proof to show that the offering is being made without unfair and unreasonable amounts of promoters' profits or participation. The effective date of the rule was March 25, 1964.

These administrative rules issued by the Administrator have been used to fill some of the obvious gaps which existed in the Oklahoma Securities Act of 1959. The prerogative of the Administrator can be exercised to meet unforeseen problems which may arise in the day-to-day administration of the statute.

Summary of Securities Registration

Table 4 shows the number of applications for securities registration and the number of those applications which became effective registrations for the years 1961 through 1964. Denials of registration applications are not included in the table because the Department of Securities, in effect, never denies registration of securities issues. The Department may notify the applicant that the application is

TABLE 4

SECURITIES ISSUES REGISTERED WITH OKLAHOMA SECURITIES COMMISSION 1961-1964

Year	Number of Applications	Number Withdrawn	Number of Effective Registrations
1961	432	35	397
1962	378	41	337
1963	317	11	306
1964	344	12	332

Source: Oklahoma Securities Commission Annual Report to the Governor and Members of the Legislature, 1965.

incomplete, or that certain corrections must be made before it will be approved; however, as soon as the application conforms to the statute and administrative rules and is in a form acceptable to the Department, registration of the securities is automatic. When an application is in incomplete form, or must in some way be corrected, the applicant for registration is notified of the deficiencies and no further action is taken by the Department of Securities unless and until the applicant responds to the notification. If the applicant for registration will not or cannot make the suggested corrections, the application is usually withdrawn.

During 1961 there were 432 applications for registrations of securities issues filed with the Oklahoma Securities Commission. Eighty-one per cent (81%) of those applications became effective. During 1962, 89.2 per cent of the applications became effective and in both 1963 and 1964, 96.6 per cent of the applications for securities registration became effective. All the applications which did not become effective were withdrawn.

The number of applications for registration declined 26.6 per cent between 1961 and 1963. This decreasing trend, however, was reversed in 1964 when 344 applications were filed.

Table 5 is an analysis of the security issues registered with the Oklahoma Securities Commission for the years

TABLE 5

REGISTRATIONS AND DOLLAR AMOUNTS OF SECURITIES REGISTERED
BY OKLAHOMA AND OUT-OF-STATE CORPORATIONS
1961-1964

Year	Oklahoma Corporations		Out-of-State Corporations		Total Issues Registered	Total Amount of Securities Registered
	No. of Issues	Amount of Securities	No. of Issues	Amount of Securities		
1961	192	$117,447,394.00	205	$74,176,070.00	397	$191,623,464.00
1962	200	177,409,754.00	137	44,775,350.00	337	222,185,104.00
1963	207	186,000,000.00	99	33,000,000.00	306	219,000,000.00
1964	224	155,000,000.00	108	40,000,000.00	332	195,000,000.00

Source: Oklahoma Securities Commission Annual Report to the Governor and Members of the Legislature, 1961-1964.

1961 through 1964, showing the dollar amount of securities and the number of securities registered by Oklahoma and out-of-state corporations.

Oklahoma corporations were responsible for 48.4 per cent of the total number of securities registered during 1961. Out-of-state corporations were responsible for the other 51.6 per cent. Oklahoma corporations issued 61.3 per cent of the total dollar volume of securities registered during 1961.

During 1962 Oklahoma corporations comprised 59.3 per cent of the total corporations registering securities and were responsible for 79.8 per cent of the dollar amount of securities registered. Out-of-state corporations were 20.2 per cent of the total and issued 40.7 per cent of the dollar amount of securities registered.

During 1963 Oklahoma corporations were 67.6 per cent of the total and issued 84.9 per cent of the dollar amount of securities registered in Oklahoma. Out-of-state corporations constituted 32.4 per cent of the total number of issues registered and 15.1 per cent of the total dollar amount of securities registered in Oklahoma.

Oklahoma corporations registered 66.5 per cent of the total number of issues registered and 79.5 per cent of the total dollar amount of securities registered. Out-of-state corporations registered 32.5 per cent of the total number of issues and accounted for 20.5 per cent of the

total dollar amount of securities registered in Oklahoma.

Both the number of issues and the dollar amounts involved here have increased for Oklahoma corporations while out-of-state corporations in both categories have declined in the same time span. The number of securities issues registered by Oklahoma corporations in 1964 has increased 16.7 per cent over 1961. The dollar amount of securities issued by Okalhoma corporations has increased 32.0 per cent from the 1961 level. This increase was realized even though there was a decrease in the actual dollar amount registered from 1963 to 1964.

Out-of-state corporations show a decrease of 47.3 per cent in the number of securities issues registered in Oklahoma from 1961 to 1964. At the same time, the dollar amount of securities involved in this registration has decreased 53.9 per cent over the same time span.

The total figures show there has been a decrease of 16.4 per cent in the total number of securities issues registered in Oklahoma for the period 1961 through 1964. The total dollar amount of securities registered, however, was increasing 2.0 per cent for the same period of time, even though there was a sizable drop in total dollar amount of securities registered between 1963 and 1964.

Registration Procedure

The office routine and registration procedure is the same for all three types of registration permissible

under the statutes. Since most registrations are by qualification, the procedure is designed to facilitate this type of registration and the other methods of registration follow the same routine.

Upon receipt of an application for registration, a secretary opens the correspondence, issues a receipt for any fees included in the application, and verifies that all the required exhibits required are included in the application. She then assigns an "A" or application number to the registration application.[18] Any deficiencies in the application or the required exhibits result in the application being placed in a "hold" position until such time as the application is complete. The application is then placed in normal rotation for examination by the Department of Securities for registration. The processing time involved in reviewing applications for registration is approximately two weeks.[19]

During a typical month, January of 1966, there were 41 issues of securities filed for registration with the Oklahoma Securities Commission.[20] As of January 31, 1966, there were a total of 32 applications on file with the Oklahoma Securities Commission. Eighteen of the 32 on file

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[18]Interview with Calude Olivera, May 29, 1965.

[19]Ibid.

[20]Financial Report of the Oklahoma Securities Commission, January 31, 1966.

were filed during the month of January 1966.[21] Fourteen of the eighteen are waiting upon notice of an effective registration with the Securities Exchange Commission. The other four January registrations did not meet all the requirements and are awaiting the filing of any deficiencies within the application before further processing. Six applications filed during 1965 are awaiting Securities Exchange Commission approval, and one filed in 1963 is still awaiting approval. Seven applications filed during 1964 were incomplete in some aspect, and the application for registration is awaiting further action by the applicant.[22]

As the applications are processed for registration, they are first examined by the Staff Certified Public Accountant. The main items examined are the financial statements and the prospectus to insure their conformity with the statutes and the administrative rulings concerning these items. The Staff Certified Public Accountant spends approximately 40 per cent of his time considering prospectices submitted in applications and those which are being updated.[23] The Staff Certified Public Accountant not only checks the prospectus but also edits and in most instances rewrites the prospectus for the applicant.[24] This is in contrast to the

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[21] Ibid.

[22] Ibid.

[23] Interview with Claude Olivera, May 29, 1965.

[24] Ibid.

Securities Exchange Commission procedure in which the prospectus is returned to the applicant with the notation that it is not acceptable in its present form, requiring the applicant to amend the document prior to re-submitting it.[25] The primary problems encountered by the Staff Certified Public Accountant can be classified into two broad categories: i.e., ambiguities and failure to disclose all the pertinent facts in the prospectus.[26]

After the Staff Certified Public Accountant completes his examination of the application, he returns to the applicant those documents requiring corrections. After the application is completed to his satisfaction, it is transferred to the Staff Attorney so that the legal aspects of the application may be examined. The most common legal errors encountered are violations of the corporate charter.[27] Occasionally a corporation makes application to issue securities which are not permitted under its charter or it proposed to enter or to engage in a business which is not permitted under its corporate charter. When the Staff Attorney encounters a problem of this nature, he notifies the applicant which usually files an amendment to its corporate charter with the Secretary of State.[28]

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[25] Ibid.

[26] Ibid.

[27] Interview with Jess Maynard, June 18, 1965.

[28] Ibid.

After all corrections have been made satisfactorily the applicant may have proof copies made of the prospectus. The proof copies of the prospectus must be submitted to the Department to be examined for accuracy and consistency with the copy approved by them. After the approval is given, the prospectus may be printed showing date of approval given by the Oklahoma Securities Commission.

Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration

The Securities Administrator is given broad powers in connection with the suspension of registration privileges. His authority to suspend is given if he finds that the order is in the public interest or if he finds that:

1. The registration statement is incomplete in any material respect or contains any statement which, in the light of circumstances under which it was made, false or misleading with respect to any material fact;

2. Any provision of the act, or any rule, order, or condition imposed under this act has been willfully violated in connection with this offering;

3. The securities registered or sought to be registered is subject to any administrative stop order, permanent or temporary injunction of any court under any federal or state act applicable to the offering;

4. The issuers' business or method of doing business includes illegal activities where performed;

5. The offering has worked or would tend to work a fraud on investors;

6. There are unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of potions;

7. A securities registration is attempted by notification, and the security is not eligible; and

8. The proper filing fee has not been paid.[29]

The most significant change in this section of the statute from its predecessor is the authority of the Administrator to suspend the registration if such suspension is in the public interest.

Field Examinations and Investigations

The Department of Securities has two Field Examiners on its staff whose primary function is examination of corporations who have current registrations with the Oklahoma Securities Commission. These examinations are actually unannounced audits of the books of the issuing corporation conducted in the office of that corporation. The purpose of the audit is an attempt to insure continuing compliance with the provisions of the Oklahoma Statutes after the initial registration procedure has been accomplished.

The Oklahoma Statutes require that all registrants

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[29]Oklahoma Statutes, Title 71, sec. 204.

be examined at least once a year.[30] The limited personnel with which the Department of Securities operates precludes fulfillment of this statutory obligation. The Department was successful, however, in examining all the newly registered companies except three during the fiscal year ending July 1, 1965.[31] Because of the limited personnel, however, only approximately one-third of the local registrants can be examined as often as once a year.[32]

Office Duties

In addition to the field audits performed by these two Field Examiners, they have certain office duties which they must perform. One of the Field Examiners maintains a file on financial statements and the other maintains a file on prospectices. Pertinent information is maintained pertaining to the original documents and any changes in the prospectus required by the Department.[33] The Field Examiners spend approximately twenty per cent of their time with the maintenance of these files.

A certain amount of the work performed by the Field Examiners is clerical in nature and could be performed by

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[30] Ibid.

[31] Interview with Carl Engling, June 22, 1965.

[32] Fifth Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Legislature, 1964.

[33] Interview with Ross Shelton, Field Examiner, Oklahoma Securities Commission, June 22, 1965.

other office personnel. The Field Examiner does, however, gain some valuable information from the financial record files relating to companies which are perhaps in an unstable situation or which have had a significant change in their financial position since the filing of the last financial statement.[34] In addition to these records, the Department of Securities obtains information from reference letters, persons in the securities industry, newspaper advertisements, other regulatory agencies, inquiries by persons interested in specific securities or offerings, and examination of information submitted with applications.[35]

Some of the factors which are noted by the Examiner in a review of an updated financial statement to highlight possible difficulty or a detrimental change in the financial condition of the company are:

1. A large deficit;
2. A large amount of accounts receivable as pointed out by independent audits; and
3. A large amount of notes payable.[36]

Field Examinations

When making an audit of a corporation, the Field Examiners visit the office of the corporation and request basic accounting records including the stock records, the

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[34]Interview with Brad Easterday, Field Examiner, Oklahoma Securities Commission, July 10, 1965.

[35]Ibid.

[36]Ibid.

corporate minutes, the deposit slips, and the check register. They perform their audit at that time.[37] If any of the above items are not current in every respect, the Examiner arbitrarily gives them a certain number of days in which to bring their books to a current status with the notification that he will return to audit the books on that date.[38] If the books are not current when he returns, the corporation is suspended from trading until such time as the books are brought up to date. If the required material is complete, he audits the books of the issuing corporation. The Field Examiner audits the books by following this routine:

1. Taking a trial balance;

2. Examining control accounts and determining existence of subsidiary accounts - reconcile;

3. Examining minute books - take excerpts of material items;

4. Determining compliance with Securities Commission requirements (authorization, agent's appointment, etc.);

5. Examining recent management financial statements, including profit and loss (not more than 45 days old);

6. Investigating changes in material assets and liabilities;

7. Determining the amount of stock outstanding -

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[37]Interview with Ross Shelton, June 30, 1965.

[38]Ibid.

obtain a description of all classes - account for all certificates;

8. Examining all treasury stock transactions;

9. Analyzing surplus and reserve accounts;

10. Ascertaining the authority for surplus distributions; and

11. Personally visiting with selected stockholders, taking signed statements.[39]

Practicality has dictated that item 11 listed above is not feasible from a time standpoint. They have, therefore, adopted a procedure whereby several names are taken from the stock records of the corporation and a form questionnaire is sent to them regarding the ownership of the securities.

The letter-questionnaire sent to the stockholders of records requests the following information:

1. Method of initial contact by salesman;
2. Method of referral to the salesman if any;
3. Inducements or sales approach used by salesman;
4. Receipt of a prospectus, if any;
5. Address where actual transaction was made;
6. Number of shares purchased;
7. Amount of purchase;
8. Documents received, e.g., certificate, subscription agreement, cancelled check, written agreement, receipt, advertising literature, and other;
9. Personal comments;
10. Date and stockholder's signature.[40]

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[39]"Investigative Program", Oklahoma Securities Commission.

[40]"Stock Ownership Letter of Confirmation and Questionnaire", Oklahoma Securities Commission.

The purposes of this letter-questionnaire are basically three-fold:

1. To check the accuracy of the issuing corporations and to ascertain if the listed individuals do in effect own the securities;

2. To check on the selling tactics of the agent or broker-dealer to see what promises were made in connection with the purchase of the securities; and

3. To ascertain whether or not a prospectus was provided the purchaser prior to the sale as required in the statute.[41]

Any discrepancies revealed by this information returned by the security holder is investigated by the Field Examiner.

The Field Examiner also sends a "Standard Bank Confirmation Form" to the banks where the corporation has its accounts for verification of certain financial records held by the corporation. The form provides the Field Examiners with the following information as of a certain date specified by the bank:

Credit balances of the corporation: amount of the balance, the account name, the account number, is the balance subject to withdrawal by check, and if the account bears interest, give the applicable rate;

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[41]Interview with Ross Shelton, May 14, 1965.

Depositors liability in respect to loans, acceptances, etc., the amount, the date of loan or discount, the due date, the interest rate and date it is paid to, and a description of liability, collateral, liens, endorsers, etc.

Contingent liability as endorser of notes discounted and/or as guarantor: the amount, the name of the maker, the date of the note, the due date, and any remarks which the banker wishes to make;

Direct or contingent liability, open letters of credit, and relative collateral.[42]

The information returned to the Field Examiner by the bank serves as a check on the facts revealed by the books of the corporation.

The most frequently encountered violations and/or errors encountered by the Field Examiner are:

1. Lending or advancing money to officers and/or directors of the issuing corporation, and occasionally advancing funds to broker-dealers and/or agents;

2. Misuse of proceeds of securities sale, i.e., using the proceeds of the sale for purposes other than what was indicated in the prospectus;

3. Operating with an outdated prospectus; and

4. Failure to maintain the proper and/or sufficient

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[42]Standard Bank Confirmation Form - 1961, Oklahoma Securities Commission.

accounting records.[43]

Upon completion of all phases of his investigation, the Field Examiner compiles a written report to the Administrator covering all of his audit, disclosing pertinent facts revealed by the examination, any discrepancies and/or violations encountered, and any comments he wishes to make. This written report may serve as the basis for an administrative hearing to amplify any points requiring explanation and possible suspension of registration privileges.

The Field Examiners of the Department of Securities feel that the subpoena and investigative authority currently vested in their position is quite adequate to perform successfully the functions required.[44] Additional personnel would provide closer and better regulation over those corporations registered to sell securities in the state of Oklahoma.

Summary of Examinations and Investigations

Table 6 shows the number of investigations conducted by the Field Examiners and the amount of fees collected by the Department of Securities in connection with these investigations for the years 1962-1965. The first Field Examiner was employed in October, 1962, and worked for only

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[43] Interviews with Ross Shelton and Brad Easterday, various dates.

[44] Ibid.

TABLE 6

INVESTIGATIONS AND FEES COLLECTED
1962-1965

Year	Number of Investigations	Dollar Amounts of Fees Collected
1962	39[a]	$ 1,208.01
1963	89	2,921.75
1964	131	12,925.14
1965	147	11,760.87

[a]Investigator employed for last nine months of fiscal year 1962 only.

Source: Oklahoma Securities Commission Annual Reports to the Governor and Members of the Legislature, 1962-1964, and Oklahoma Securities Commission Financial Report, January 31, 1966.

nine months of that fiscal year.[45] The shortened work year is reflected in the small amount of fees collected for the corresponding period of time.

The percentage increase in the number of examinations conducted from 1962 to 1963 was 128.2 per cent while the increase in fees collected amounted to 141.9 per cent. With legislative approval to employ a second Field Examiner in 1964,[46] the number of investigations conducted increased by 47.2 per cent and the fees collected increased by 324.4 per cent. The increases in 1965 amounted to 12.2 per cent in the number of investigations conducted and a decrease in the amount of fees collected by 9.0 per cent.

Table 7 indicates the suspensions and cease and desist orders issued by the Oklahoma Securities Commission for the years 1961-1964. If the corporation or individual is subject to this type of action by the Commission and is registered with the Commission in some fashion, then an order suspending further activity was issued against them. If, however, the corporation or individual is not registered with the Commission, then a cease and desist order was issued.

The first column of Table 7 is broker-dealer

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[45] Third Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Legislature, 1962.

[46] Fifth Annual Report of the Oklahoma Securities Commission to the Governor and Members of the Legislature, 1964.

TABLE 7

SUSPENSIONS, CEASE AND DESIST ORDERS ISSUED BY OKLAHOMA SECURITIES COMMISSION 1961-1964

Year	Broker-Dealer Registration Violation	Securities Registration Violation	Investment Adviser Regulation Violation	Violation of Prospectus	Current Financial Statement Violation	Total
1961	4	10	2			
1962	2	9		1		
1963	3	4		5	37	59
1964	1	9	1	2	90	114

Source: Oklahoma Securities Commission Annual Reports to the Governor and Members of the Legislature, 1961-1964.

registration violation and the typical violation involved was failure of an individual or firm to register with the Commission prior to selling securities in Oklahoma. The second column involves the sale of securities which have not been registered with the Oklahoma Securities Commission. The third column indicates the activities of individuals acting in the capacity of investment advisers and failing to register with the Commission in this area. The fourth column of the table deals with violations of the prospectus and typically involves the use of funds for purposes not in agreement with the provisions of the prospectus. The fifth column shows the failure to file a current financial statement with the Oklahoma Securities Commission.

The occurrence of violations in the category of financial statements and prospectus' violations coincides with the employment of Field Examiners by the Oklahoma Securities Commission. The increased activity in 1964 reflects the employment of the second Examiner by the Commission.

CHAPTER VIII

SUMMARY AND CONCLUSIONS

Summary

The statutes passed by the first territorial legislature in 1890 contained some sections pertaining to corporations and the issuance of securities. The first statute in Oklahoma specifically relating to the issuance of securities and the securities industry was passed by the legislature in 1919. Although Oklahoma was approximately seventh or eighth among the states to control this industry with legislation, it began its legislation in 1919.

The "Blue Sky Law of 1919" as the original Oklahoma statute was entitled, attempted to distinguish between "securities" and "speculative securities" by setting out certain standards which included the latter category. The statute also included provisions regulating oil royalties. The appellate courts held that the criterion established for speculative securities was too vague and indefinite and this dichotomy never again appeared in securities regulation statutes in Oklahoma.

The original statute, passed in 1919, was repealed

and replaced by the Blue Sky Law of 1931. This statute was a much more comprehensive one than was its predecessor, and it reflected some of the changes which had occurred within the securities industry after the passage of the original statute. Not only was the law more comprehensive, but provisions were made for the appointment of a Securities Commissioner and a staff to administer the provisions of the act. The Oklahoma Securities Commission was created under these provisions. The Commission was charged with the responsibility of enforcing the provisions of the act and served in an advisory and policy-making capacity.

Although the Blue Sky Law of 1931 remained basically unchanged for approximately twenty-eight years, the Commission became enmeshed in political maneuvers of the legislature of Oklahoma. The legislature in 1939 abolished the Oklahoma Securities Commission and transferred the duties, functions and responsibilities of the Commission to the State Banking Commissioner. A securities division of the Banking Department of the state of Oklahoma was established with a Deputy Commissioner of Banking in charge of this division.

The Oklahoma Securities Commission was re-established by the legislature in 1951 with basically the same structure it had enjoyed prior to its abolishment in 1939. The Commission was once again charged with the responsibility of enforcing the provisions of the Blue Sky Law of 1931. No

major revisions had taken place in the statute since it was originally passed in 1931.

Events in connection with the highly publicized Selected Investments Company case highlighted the need for a revision of the s-atute in connection with the regulation of securities. This case, however, did not point out the need for a new statute as much as it did the decay of the Securities Commission and its failure to use the tools which were at hand in the Blue Sky Law of 1931. As a result of this case, however, Oklahoma did adopt the Uniform Securities Act now in effect in at least fifteen states.

The Oklahoma Securities Act of 1959 is a very comprehensive statute in most respects and is generally adequate for controlling the securities industry in Oklahoma. There are three basic types of securities laws, i.e., full disclosure, registration of securities, and registration of brokers and dealers. The Uniform Securities Act, adopted in Oklahoma, contains the essential elements of all three types of laws. The Oklahoma law attempts to control the issuance of securities by requiring their registration and establishing certain minimum standards which the issue must meet prior to being approved for registration. Agents and broker-dealers are controlled through a required registration procedure and a testing procedure, as well as bonding and capital requirements. The registration of an issue of securities requires the disclosure of all the pertinent facts

surrounding the issue and the issuing corporation prior to its approval by the Administrator. This full disclosure policy is accomplished by the use of a prospectus, the same document used by the Securities and Exchange Commission.

In addition to the statutory requirements of the Securities Act of 1959, the Securities Administrator occasionally issues administrative rules when he deems it necessary to correct a deficiency in the statutes. The administrative rules currently in effect cover a wide range of topics ranging from bonding requirements for broker-dealers, agents and investment advisers, to exempt securities exchanges, as well as a wide variety of other topics. The statutes and orders with which an individual in this industry must comply are quite burdensome.

The statute passed by the legislature in 1959 remains virtually unchanged today.

Conclusions

There are considerable limitations to an outsider's attempting to observe and to evaluate the inner workings of an organization without actually being a part of that organization. The following conclusions pertaining to the regulation of securities in Oklahoma represents the opinion of the writer, resulting from observation and interrogation, rather than from participation.

Approximately one-third of the fifty states, including Oklahoma, have adopted the Uniform Securities Act. In

general, the provisions of the Securities Act of 1959 are comprehensive with respect to the regulation of the securities industry in Oklahoma. There are some areas, however, which could be changed to strengthen the law. The prcposed changes will be discussed in subsequent parts of this chapter.

The registration procedure for agents, broker-dealers and investment advisers is a smoothly functioning part of the office procedure. The licensing process is not a regulatory or control mechanism. It is a device used to identify and to maintain records on those individuals in the sales function of the securities industry in Oklahoma.

Some type of system perhaps should be instigated to serve as a check on the testing procedure and the results of the tests. At the present time, no records are maintained by either the National Association of Securities Dealers or the Department of Securities on the results obtained from the testing program. Neither of these agencies can indicate whether the tests currently being administered are adequate or inadequate, how many applicants repeat the tests, how many times the test must be repeated, and why the failure of the applicant occurred in the first place.

Administrative rule 64-14 currently requires that broker-dealers maintain a minimum capital position of $10,000. The ruling was based on the inability of some broker-dealers to respond to damage claims which had arisen as the result

of a securities transaction leading to a civil liability but not involving a criminal violation of the Oklahoma Securities Act of 1959. The bonding requirement of the broker-dealer is valid only in those instances where there has been a violation of the Securities Act of 1959.

This minimum capital rule merely increases the cost of the broker-dealer in doing business since he must, in effect, maintain a minimum balance of that much cash. Possibly, a better approach to the problem would be to amend the statute so that the $10,000 bond posted by the broker-dealer would be applicable without regard to a consideration of the violation of the Securities Act of 1959. At the same time, the statute could be changed to increase the bonding requirement to a figure which would be more representative of the industry and give an aggrieved individual a recourse of some substance against broker-dealers, agents and investment advisers. The legislature was correct in realizing that some type of bonding requirement be made of these individuals. They were, however, somewhat unrealistic in the determination of the size of that bond. It is well within reason to assume that there are many occasions when the size of a single transaction exceeds the limits of the bond of the individual involved. Thus, in case of a recovery suit, the plaintiff could recover only a portion of the actual loss incurred from the bonding company. The establishment of a more realistic bonding requirement for agents, broker-dealers

and investment advisers should be undertaken.

The registration of securities, accomplished by any of the three methods permissible under the statute, is a well-organized process with respect to the office procedure involved. Any delays encountered in the processing of the applications are derived from the incomplete application of the registrant or the inevitable delay when the number of applications for registration taxes the physical facilities the Department of Securities.

Some of this delay in the office procedure is directly attributable to the policies of the Department of Securities with respect to the prospectus which applicants submit with their applications. At the present time, the Staff Certified Public Accountant edits and actually rewrites the prospectus for those applicants who have difficulty with this part of the registration application. The major portion of the Staff Certified Public Accountant's time is spent in revising prospectices submitted to the Department.

This method should be replaced by one which allows the applicant for registration and his attorney to have a pre-filing conference with the staff of the Department of Securities in which any questions pertinent to the statute or departmental rules and regulations could be answered. This method would a-low the Staff Certified Public Accountant to devote more time to the auditing of applicants' financial records, which should be his primary job. He should

not be required to edit and to rewrite the prospectus.

The information required by the statute to be filed in connection with the application for registration is voluminous and oppressive. This is especially true of issues registered by qualification. The life history of not only the issuing corporation, but of all individuals connected in an official capacity with the applicant, is required. If the number of registrations by qualification exceed the current two per cent of all registrations, it would be humanly impossible to read all of the required attached exhibits and schedules with the application.

It would appear that some of the information required to be filed with the application is extraneous and superfluous. Specifically, one of the items required in the registration statement is a statement setting out the general competitive conditions in the industry or business in which the applicant will be engaged. A statement of this type is extremely difficult to compose and quite likely to be somewhat meaningless since it is largely opinion. The statement also requires a description of the physical property and equipment of the applicant. This type of information may be vague and of little use.

Administrative rule 61-11 regulates the amount of sales commission which an issuer can pay in connection with a new issue. The limit, as placed by the rule, is fifteen per cent of the amount actually sold, a standard maximum

figure in the investment banking business. The rule, however, does not mention the giving of stock options to the sales organization in connection with this limiting factor on sales commissions. Concerns which sell the new securities being issued in the primary markets quite often will obtain options to purchase shares at a stated price at some future date. Thus, in reality, the effect of this rule is circumvented if the stock rises in price in the secondary market. If the investment banker or broker-dealer is successful in obtaining this option, he can remain actively in the market, supporting the market for the securities, and perhaps exert an upward influence on the price of the securities. If the price becomes sufficiently attractive, he can exercise his option, sell the securities in the secondary markets and realize a windfall profit. This situation is possible when the price has been artificially driven significantly higher than a reasonable intrinsic value. It would appear that the Administrator should include in the maximum commission allowed under administrative rule 61-11 profits realized from the sale of stock obtained through stock options issued to investment bankers or broker-dealers.

At the present time, the statutes of Oklahoma contain no provisions pertaining to trading in the secondary markets. This absence of regulation means that securities which are traded in the secondary markets on a strictly intra-state basis are not regulated in any manner. The authority of the

Oklahoma Securities Commission extends only to the primary markets, i.e., the marketing of new security issues. The Commission has no authority over any activities in the secondary market, other than licensing of personnel in the securities business. It would be advisable for the legislature of Oklahoma to enact a statute which in some manner regulates this market. For example, legislation outlawing the manipulative practices of stock prices in the secondary markets not covered by federal regulation would be desirable. Disclosure of holding and transactions of company insiders would deter some questionable activities.

The two Field Examiners employed by the Department of Securities appear to be capable of performing their duties adequately. They could, however, devote more time to their duties if they did not have routine office work to perform. This consists of keeping a file on the updating of the prospectices and financial statements. The routineness of this job points out the fact that they could be handled adequately by an individual whose salary and qualifications would be somewhat lower than are those of the Examiners.

The Examiners are also required to submit a rather lengthy and formal report on each company they examine. It would appear feasible to adopt a greatly shortened and abbreviated form for those companies examined, where no discrepancies or violations of any kind are found to exist. The formal report could be maintained for those companies

which present some doubt in the Examiner's mind. The ultimate effect of both of the previous suggestions would be more time to devote to the primary task of examining the companies.

The job of examination would perhaps be improved if the activities of the Examiners were better coordinated. At the present time, no assignments are made, unless a special situation arises. The Examiners visit companies which they assume need to be examined, with little coordination from the Department of Securities. It would be advisable to establish an examination procedure with some kind of priorities for the routine examinations of companies, visiting those companies which have not been examined for the longest period of time. Also, worthy of consideration is changing the system to preclude an Examiner from examining an applicant two or more times in succession. If the Examiner made the last examination, he would be ineligible to conduct the next unless circumstances dictated otherwise.

The Department of Securities could do a more efficient job of regulation if more personnel were available. This is especially true in the area of field examinations, a critical area in security regulation. As discussed in Chapter VII, all the companies with outstanding registrations were not examined in the previous fiscal year. This situation is directly attributable to the lack of personnel. Some of these companies need to be examined more often than

annually.

An increase of personnel would, of course, require an increase in the appropriations received annually from the legislature. This increase in a-propriations is needed and recommended. These additional funds would also allow for the expansion of the office staff which is rapidly approaching its maximum as far as the amount of work it is capable of handling. Also, in addition to the employment of additional personnel, the salaries of the currently employed personnel need to be adjusted to bring them more in line with what they would receive in a comparable outside job. Considering the fact that the salary of the Administrator has a legislatively imposed maximum of $12,000, the ability of the Department to employ and to maintain a competent staff is severely handicapped. Considering the constraints under which the Department of Securities currently operates and has operated in the past as far as personnel and finances are concerned, however, the Department is adequately performing its assigned function of administering the provisions of the Oklahoma Securities Act of 1959.

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