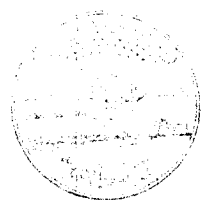


FILE

Subject

*State Boards  
Consumer Credit  
Comm.*

Copy to



STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-3751 Topeka, Kansas 66612

VERN MILLER  
Attorney General

LANCE W. BURR  
Chief, Consumer  
Protection Division

January 22, 1974

Opinion No. 74-18

Mr. Lee B. Connell  
Consumer Credit Commissioner  
Suite 1114  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Investment Certificate Act

Dear Mr. Connell:

In your letter of November 10, 1972, you request an opinion regarding the definition section of K.S.A. 16-630 and more specifically the definition of investment certificate which the above cited statute defines as:

"...any security issued by an investment company to the public directly by the issuer evidencing the fact that such company is indebted to the person named therein, including the thrift certificates, thrift notes as excepted in subsection 17-1261 (i) of the General Statutes Supplement of 1961 and/or certificates in receipt book form evidencing regular or irregular sales as to intervals of time or as to dollar amounts provided that such securities and transactions related thereto as are exempt by the Kansas Securities Act shall not be included or subject to the definition and limitations herein. Investment certificates shall not be deemed to include common or preferred stock, or face

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amount debentures or subordinated debentures which are serially identified and are a part of an issue having a common inception and maturity date of each series and which are sold through a broker dealer or agent who are not employees of the issuer." K.S.A. 16-630.

In your letter of November 10, 1972, you bring to our attention the activities of two corporations which own and control several subsidiary corporations which in turn operate numerous consumer loan and sales finance offices in the State of Kansas. The managers of these consumer loan and sales finance offices have registered as dealer brokers or agents with the Securities Commissioner of the State of Kansas. The managers are selling junior subordinated notes issued by their employer's parent corporation. The notes are sold to the general public.

Question: Are junior subordinated notes offered for sale to the general public by employees of a subsidiary corporation of the issuing corporation "investment certificates" as defined by K.S.A. 16-630?

The basic issue framed by the above question is whether or not employees of a subsidiary corporation are to be regarded as employees of the parent corporation which actually issues the investment certificate which is in turn offered for sale to the general public.

It appears that the actions taken by the manager of the consumer loan and sales finance offices referred to above, result in the circumvention of the remedial provisions of K.S.A. 16-601, et seq. The circumvention occurs by having employees of the subsidiary corporations make the actual sale of the parent corporation's investment certificates. K.S.A. 16-630 defines investment certificates as, "any security issued by an investment company... (and) ... sold through a broker, dealer or agent who are not employees of the issuer."

It is the opinion of this office that the managers of consumer loan and sales finance offices, which offices are owned and operated by wholly owned subsidiaries of a parent

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corporation, are not employees of the parent corporation. Subsequently, these managers cannot be prohibited by your agency from selling investment certificates issued by the parent corporation. The fact that an individual is a salaried employee of a subsidiary corporation does not make that individual an employee of a corporation which wholly owns, controls and supervises the subsidiary corporation.

To remedy this apparent circumvention of K.S.A. 16-601, it would be necessary to amend K.S.A. 16-630 by striking the period on the last line after "issuer" and adding "or the employees of any subsidiary corporation of the issuer."

Since question one of your letter of November 10, 1972, is answered in the negative, I will not refer to or make any comments regarding questions two and three since those questions were contingent upon affirmative answer to question one.

Very truly yours,



VERN MILLER  
Attorney General

VM:JVF:eh