

Topeka Capital, Aug. 11, 1913

THE "BLUE SKY" LAW.

A Desirable Statute Which Still Needs Important Amendments to Meet the Situation.

To the Editor of The Capital.

The above subject is now thrusting itself upon public attention, chiefly because of its connection with a case which affords some opportunity for sensational newspaper treatment. The occasion, however, also, furnishes an opportunity for discussion of a very important public question. The "blue sky" law has been extensively advertised as the inauguration of a great reform. The writer, however, is convinced that this statute contains serious defects which compromise its value and do not destroy its usefulness. The evils which it is designed to meet are very real and some legal remedy is much to be desired. But the difficulty with this statute, as it seems to the writer, is its uncertainty. It is impossible to tell what it means. It purports to be a statute for the regulation of the business of what it designates "investment companies."

The original act of 1911 is entitled, "An act to provide for the regulation and supervision of investment companies and providing penalties for the violation thereof." The first section which has been amended by the act of 1913, proceeds to define the phrase "investment companies," and then further proceeds to provide that such companies before transacting their proper business, must file certain statements with the bank commissioner, setting forth the financial condition of such companies, and other matters. Such a statement, under the act of 1913, is then subject to examination by the charter board, and, if approved by such board, the bank commissioner is directed to issue to such company a permit to do business. If without securing such permit, any company shall transact any such business, or if any agent thereof shall sell any of its stock, bonds or other securities, such company or its agent shall be guilty of a felony and is rendered punishable by confinement in the state penitentiary.

As we have seen, the first section of the act defines the term investment company. It does so in the most elaborate manner, and, as it seems to me, succeeds in combining within the one definition many incongruous elements and leaves the real meaning of the phrase in great doubt. The statute says that the name investment company shall include "every person, corporation, company, co-partnership, or association, whether incorporated, or unincorporated (with certain exceptions), which shall offer or negotiate for the sale of, take subscriptions for, or sell any stocks, bonds, contracts or other securities of any kind or character to any person or persons in the state of Kansas (United States bonds, state and municipal bonds and other securities being, however, excepted)."

The first question which arises respecting the interpretation of this language is whether it covers the original issue and sale by a corporation of its own stock. Upon a consideration of the entire statute, I am disposed to think that it should not be so interpreted.

The character of the statement required to be filed with the bank commissioner to obtain a permit to do business, and much of the subsequent language of the statute, is inconsistent with that interpretation. However, the author of the law, who was also its first administrator, has placed that interpretation upon the act. If that is true, then of course, every business corporation is an investment company under this act, for every such corporation must issue its own capital stock. And it has been the practice of the bank commissioner to require all persons proposing to organize corporations for every purpose to comply with this statute. A partnership composed of two persons engaged in the dry goods business who propose to organize a corporation in which they are to be the sole stockholders, who do not propose to sell any of their capital stock to the public, would, nevertheless, come within the provisions of this statute under such interpretation. Such persons might in good faith comply with the general provisions of the corporation law, but if they failed to comply with the special provisions of this act, it would seem that the corporation so established would be subject to the heavy penalties provided by this law, further than that, if the issuance of its original stock renders every corporation an investment company, within the meaning of this statute, then it would seem that it must continue to be such an investment company in respect to all of its ordinary business. The act itself does not attempt to distinguish between the different kinds of business which an investment company may transact.

Section five of the act of 1913 expressly states that "any agent or agents who shall do or attempt to do any business for any investment company shall be deemed guilty of a felony and upon conviction thereof shall be fined not less than \$100 or more than \$5,000, or by imprisonment for not less than one nor more than three years in the state penitentiary."

If a corporation like the Mills Dry Goods company is an investment company because it issues its own capital stock, it would seem that it continues to be an investment company in all its transactions, including the sale of merchandise, and it would seem further that if such corporation had failed to comply with this statute upon issuing its stock, then any clerk in such establishment who sells a ribbon to a customer would be liable to be sent to the penitentiary. Of course, it is not probable that such an interpretation will actually be placed upon the statute, but I see no way to escape from the logic of such a conclusion if we once adopt the interpretation of the author of this law, which is that it covers the issuance of stock by every corporation.

It seems to me that two things fundamentally distinct are utterly confused in such an interpretation, the issuance of capital stock, and the transaction of ordinary business after

the corporation is fully organized. It is not altogether accurate to say that a corporation sells its own capital stock. It creates and issues its own capital stock. It creates its own capital stock by such issuance.

It is certainly of the greatest consequence to know whether this act does control every corporation, and

every kind of corporate business within the state. Is every such business subject at any time to examination by the bank commissioner? Can the charter board pass upon the question whether the proposed plan of business of an ordinary corporation is within the language of this statute? Is it fair and equitable plan for the transaction of business? Certainly so serious a question should be set at rest in some way.

Even if every corporation is not an investment company within the meaning of this statute, there are still very different meanings for this phrase indicated in the statute itself. As we have seen, the statute requires an investment company to be any person, partnership or partnership which sells or offers for sale any stocks, bonds, or other securities. Does this mean the sale by the corporation of its own stocks, bonds, or other securities that is required by such corporation? Or does it mean the sale by a person or company of the stock, bonds, or securities of some other person or corporation? The two things are radically different. The sale of stock, bonds and securities of other persons or corporations is the business of a broker or agent. Is this the kind of business that the statute contemplates? Much of the subsequent language is inconsistent with such interpretation.

The requirements concerning the statement to be prepared by such a company and also concerning the examination to be made of its affairs, show that the author of the statute fully contemplated that such stocks, bonds and securities should be issued directly by such companies as their own contracts. Among the requirements in the amended statute is the requirement that it shall contain a copy of all contracts, stock, bonds or other securities which it (the company) proposes to make, sell or negotiate to sell to its contributors. And in section three of the act of 1913, it is provided that the charter board shall examine the proposed plan of business and proposed contracts and they shall determine whether in their judgment such plan promises a fair return of the stock, bonds, contracts or other securities to be placed for sale.

Evidently the author of this statute had in mind as corporate classes or distinct business is the execution of its own contracts to be issued for its contributors. A typical business of this kind is that of a building and loan association. Although such associations are expressly exempted from the provisions of this act. The issuance of stock by an ordinary corporation is a preliminary matter. It is a part of its organization. It is no part of its ordinary business. When once organized it manufactures machinery or sells dry goods or makes coal or carries on some business other than selling stocks, bonds and securities. But the ordinary business of a building and loan association is to issue its own stock. It is strictly an investment company that its ordinary business is to furnish investments for its customers. When the stock of a stockholder in a building and loan association is paid by it is ready to be sold.

Now, recently this is the kind of corporation fully contemplated in this statute. There have been at various times large numbers of like corporations doing business similar to that of building and loan associations, issuing contracts or bonds having a certain par value upon which the holder was to make payments until they matured at par. Many of these schemes were mathematically impossible. They were tantamount upon their face to the entire appropriation of

the law should authorize a public officer to pass upon the feasibility of a scheme of that kind. It is not like passing upon an ordinary business proposition. It is not like determining whether it is a good proposition to build and operate a flour mill in a certain town. Companies organized for that kind of business are strictly investment companies and it is entirely proper that their affairs should be strictly scrutinized by law. By the amendment of 1913 paragraph three, section 1, this kind of a business is specifically pointed out. By the same amendment a further extension is given to the meaning of the term, investment company, by including all persons or corporations who sell real estate situated outside the state of Kansas upon installment plan. Whether such a transaction should thus be supervised by the law or not, it is a transaction entirely unlike the other transactions covered by the act. It seems to me that there are at least four distinct meanings for the phrase, investment company, either indicated by the act itself or in the official interpretation thereof.

First, according to the practice of the bank commissioner every corporation is an investment company. Second, an investment company is a broker that sells stocks, bonds and other securities issued by other parties. Third, an investment company is a company that issues and sells its own contracts. And fourth, an investment company is anybody who sells land in Kansas which is located outside of the state. Mr. Justice of the statute is that it is a medley, a combination of incongruous elements and that is a very serious situation where disapproval is a felony.

For instance, does this act cover the case of the ordinary broker? By the definition of the phrase, investment company, it certainly does not. It includes any one who sells stocks, bonds or other securities, excepting certain specified securities. Suppose now that the owner of a share of stock in the Pennsylvania railroad innocently disposes of it. Is he liable to go to the penitentiary?

It seems to me that the confusion in this statute is as great as almost to render it incapable of proper amendment.

We doubtless need a carefully drawn statute covering the business of investment companies, strictly applied meaning such companies as issue and sell their own contracts. The general corporation law has already made some progress in grappling with the problem of regulating the issuance of the capital stock of corporations generally. But these subjects also need further very careful consideration. It is a subject distinct from that of the control of strictly investment companies and should be separately handled. The question of regulating brokers is also a distinct and separate matter. Likewise the question of unscrupulous regulation of the sale of land which has happened to be located outside the state is also different from anything else contained in this statute.

It is a question on many subjects of very doubtful constitutionality. To say that a man cannot sell his own land except upon the basis of the charter board is a serious proposition, but in any event the subject has no necessary relation to the regulation of investment companies.

This article is not, however, concerned with any specific provision of the statute, but the statute itself seems to me to be very ambiguous and largely uninterpretable.

Topeka, August 12, 1913. C. W. EVANS

Topeka Capital, Aug. 12, 1913.

DOLLEY GREATLY PLEASED OVER COURT'S DECISION

see that it is properly defended whenever it may be attacked. We are prepared to journey to and through the highest courts of the land with this statute if the enemies so desire. It is no to them. We await their pleasure.

Points Out That Blue Sky Law is Gaining Steadily in Popularity

The decision of the courts yesterday in upholding the constitutionality of the famous blue sky law naturally was very pleasing to J. N. Dolley, who as state bank commissioner was largely instrumental in having the law placed on the statute books. Mr. Dolley declared that the law is gaining in popularity in other states and is being adopted every year by additional states and everywhere, he declares, the investors and legitimate promoters are well pleased with the purpose and workings of the plan.

"I am very much pleased with the decision of the court regarding the validity and constitutionality of the blue sky law," said Mr. Dolley yesterday. "I personally never have had any doubts as to its validity and constitutionality."

"It is a conservative, constructive statute, born of necessity, all the demand of the American people for protection against the underworld investment companies, partnerships and persons who were swindling the American people from between three and five hundred millions of dollars annually."

"Efforts to destroy the blue sky law with powerful lobbies and influential third houses, they now appeal to the courts under the old threadbare and much worn-out jokers, defective and assailing the constitution, the flag and the great crime of negligence of not giving sufficient attention to the process of law."

"Too much credit cannot be given Attorney General Dawson and his able assistants for the strong, forceful manner in which this litigation was handled and the law successfully defended. They have rendered the people of Kansas a very valuable service."

"During the month of July, some of the state bankers of Kansas organized the National Blue Sky Law Protective Association, and the organization work is going rapidly on in most of the eighteen states that have passed the law, and are reaching into other states, encouraging them to enact the law in their next legislative sessions."

"Much enthusiasm is being shown, and a large number of applications for membership from the vast army of law-abiding citizens, business men and state officials from all over the United States are being received daily. This association purposes to faithfully stand by this statute and

Topeka Capital, March 24, 1915

"BLUE SKY" LAW MADE TIGHTER AGAINST CROOKS

Defines Speculative and Investment Securities.

Small chance for promoters with nothing but prospects to sell—Senator thwarts the author.

Among the important pieces of legislation enacted by the present session of the legislature was Senate bill 431, signed yesterday by Governor Campbell. This measure makes a number of important amendments to the Kansas "blue sky" law, in fact nearly rewritten that measure. The act was finally passed as being the first of the first class, drawn by the Senate, now in the hands of the bank department in the office of the bank commissioner.

The new law after defining speculative and speculative securities, it extends standard securities almost entirely from the control of the state banking department, and gives that department much more power over speculative securities.

DEFINES SPECULATIVE SECURITIES.
Speculative securities, according to the new law, include the following:

Securities issued to promote enterprises promising gains in excess of the ordinary returns usually obtainable from enterprises of similar character.

Securities for the sale of which a commission of more than 5 per cent is offered.

Securities whose par value is determined rather by chance than by the elements of safe investment.

Securities whose value depends upon future developments rather than on present tangible assets and conditions.

Securities of any enterprise which includes patents, formulas, good will or intangible assets or which proposes to issue the material part of its securities in payment for these things.

Securities made or issued for the sale of unimproved land on deferred payments or on the installment plan, where such lands are not within the state and where the value of the security depends on the promise of the promoter to furnish irrigation, transportation or similar improvements.

MAY HAVE A PENALTY

The law makes it unlawful to offer for sale any speculative securities without obtaining a permit from the

banking department. The act also provides in detail what information must be furnished the state department, and means practically all the information in our work bearing on the company and its securities. The formation of the company and its assets will be made at the cost of the company, applying for permission to do business in the state. These securities are exempt from the operation of the new blue sky law.

Under the new law, those of the foreign government, any state, territory, county, city, township, district, or other taxing subdivision of any state or territory.

Securities issued under permission of the public utilities commission of Kansas or similar boards in other states.

Securities of state or national banks, or trust or mortgage companies dealing exclusively in mortgage on farm or other real estate, building and loan associations.

HEAVY PENALTIES PROVIDED

The bank commissioner is given power to make any examination he may deem necessary. Any person making any false statement to the banking department in regard to securities is liable to a fine of from five to \$1000, or imprisonment for from one year to five years in the penitentiary, or both.

Any person or corporation doing business in violation of the act is liable to a fine of not more than \$5000 or by confinement in the penitentiary for from one to seven years, or both. The law also provides that where the value of the securities depend upon the development of mines, oil or gas wells, the board of administration, on order from the bank commissioner, shall cause the engineers of the Agricultural College of University to make an examination and report to the department.

Topeka Capital, Feb. 16, 1915

BLUE SKY LAW IS MEETING THE NEED

Constitutionality Has Been Determined in District Court and Would Be Unwise to Change, Says Dolley.

IT FITS KANSAS CONDITIONS

With reference to efforts that are being put forth to amend the Kansas blue sky law, J. N. Dolley, author of the present law, calls attention to its inadequate provisions and says:

There has been considerable discussion recently regarding the constitutionality of the Kansas blue sky law. Constitutional law experts have been rendering opinions and offering advice regarding it. It is a well known fact that the Kansas blue sky law has been held constitutional by the district court of Shawnee county last year. It was brought before Judge Dana and Judge Whitcomb of Shawnee county, sitting jointly, in the Mahan case. All questions and points of the constitutionality of the law were raised and argued fully by a corps of the most able attorneys of Kansas, representing both sides.

LAW HELD CONSTITUTIONAL

The court held the law constitutional every part and session of it and their decision is a matter of record and it has been sent broadcast over the United States—hundreds of copies of it—by request of the different states of the Union.

The Kansas blue sky law fits Kansas business and Kansas operations fully and satisfactorily and we do not see why it should be rebuilt or changed until its needs demand it. If the advocates of the law wish to take the supreme court of Kansas and their last lit constitutional case, they may that right and have had their right for four years. Let the sense of the law accepted Judge Dana's and Judge Whitcomb's decision be that these two judges are two of the most able in Kansas.

U. S. LIKES KANSAS LAW.
The attorneys general of the United States have drafted a "blue sky" law based largely on the Kansas law, but it is a very difficult matter to pass a uniform law that will suit the needs of all the states. Changing the Kansas law, we will be obliged to start all over again as far as constitutionality is concerned, but under the present law half of the legal road has been traveled and settled and I believe any changes in the Kansas law at this time would be unwise.

Topeka Capital, Jan. 26, 1915

ORGANIZED ATTACK THREATENS DEFEAT OF BLUE SKY LAW

Enemies of Bill to Protect In- vestors From Designing Pro- moters Launch Fight for Life All Over Nation.

BASE LAW ON KANSAS MEASURE

Committee of Attorneys Gen- eral Submits Proposed Court and Lawyer Proof Plan Drafted for Use in All States.

That a nationally organized attempt to knock out the Kansas blue sky law is being made all over the United States was the statement last night of J. N. Dolley, former state bank commissioner, president of the National Blue Sky association, and father of the blue sky law. The attack is to center on the Kansas law.

"The influence of the men fighting the blue sky law is being felt in Topeka," Mr. Dolley said. "The law has worked so well, and has accomplished its purpose so thoroughly that the promoters whose business has been hurt are making every effort to knock it out. And I have pretty good information that an attempt to amend it so as to kill the effectiveness of the law may be made at this session of the legislature."

25 HAVE ADOPTED LAW

"Since Kansas adopted the law and put it in force, some two dozen other states have passed similar laws. Others are planning to."

When a committee of three state attorneys general finished drafting a blue sky law that ought to be lawyer and court proof they turned out a product based largely on and differing in few essentials from the Kansas blue sky law. Copies of the proposed law to be submitted to a number of state legislatures were received in Topeka yesterday.

THREE MEN DREW UP BILL

Following the Kansas blue sky law, the plan of which has been copied by some two dozen states have passed similar laws. A number of them have been injected into state and federal courts, with varying results. When the national association of attorneys general met last fall it instructed John S. Dawson, then attorney general of Kansas and president of the organization, to appoint a committee of three to draw up a tentative law and that could be passed by any number of states, with the idea of having as nearly a uniform law covering the sale of stocks, bonds, investments and securities as possible. Grant Fellows of Michigan, George Cossom of Iowa, and William L. Moore of Arkansas, were appointed on the committee.

ADVERTISEMENTS UNLAWFUL

The penalties in the new draft are higher than the penalties provided by the Kansas statute, with a maximum of one year's imprisonment where the Kansas law allows three. It provides a commission to administer the law, as is the case in Kansas, where the 1913 statute names the bank commissioner, attorney general and secretary of state. Both laws provide for filing reports and advertising with the bank commissioner, and give that official the power to examine the books and records of the companies.

The proposed uniform law also makes it unlawful for any newspaper to carry advertisements for the sale of any stocks, bonds or securities which have not been approved by the commission.