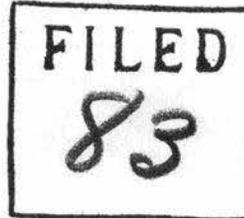


SECURITIES:  
BLUE SKY LAW:

Sale of burial contracts providing for payment on the installment plan does not constitute a sale of a security under Missouri Blue-Sky Law.

October 2, 1951

Honorable W. Randall Smart  
Commissioner of Securities  
Jefferson City, Missouri



Dear Sir:

This department acknowledges receipt of your letter, in which you request an official opinion from this office. Your request reads as follows:

"We are in receipt of a letter from the Better Business Bureau of Kansas City enclosing therein a photostatic copy of the contract entered into by the FLORAL HILLS MEMORIAL CHAPELS, INC., with Marie C. Larson, purchaser of the casket and funeral service and an instrument referred to as Supplementary Protective Agreement, and requesting that we determine if these instruments are securities and as such subject to registration under our Securities Act.

"We, therefore, ask that you please examine these instruments and let us have your opinion, as to whether the contract and supplement instrument are to be considered securities under our State Securities Act."

In Chapter 409, Section 409.020, RSMo 1949, the term "security" or "securities" is defined as follows:

"The term 'security' or 'securities' means any note; stock, treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate, receipt,

Honorable W. Randall Smart

or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; beneficial interest in or title to property or profits; any certificate, contract, receipt or instrument whatsoever representing or constituting evidence of, or secured by, title to or interest in any oil, gas or mining lease, royalty, or deed, and interest, units or shares in any such lease royalty, or deed; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; provided, however, that the term 'security' or 'securities' shall not include any stock, scrip or other certificate of interest heretofore or hereafter issued by any building and loan association or savings and loan association incorporated under the laws of this state or of the United States and subject to examination, supervision and control by either or both."

A certificate is defined in Webster's International Dictionary as "a certified statement; a written testimony to the truth of any fact." The word "interest" is defined as being "a right, title, share or participation in a thing; specif., participation in advantage, profit and responsibility." A certificate of interest, therefore, is a written testimony to the truth of a right, title, share or participation in a thing.

In the case of Royal Loan Co. et al., V. United States 154 F. 2d 556, the question of the definition of a security is discussed as follows, l.c. 558:

"A security is evidence of debt or of property, and a corporate security is a means used by a corporation to secure funds which it can employ in its business.

Honorable W. Randall Smart

'However termed', whether called stock, bonds, debentures, certificates of indebtedness, notes or what not, when issued by a corporation to obtain funds or property for use in its business, such instruments are 'known generally as corporate securities' within the meaning of the statute. *Lederer v. Fidelity Trust Co.* 267 U.S. 17, 45 S. Ct. 206, 69 L. Ed. 494; *Willcuts v. Investors' Syndicate*, supra; *Lawyers' Mortgage Co. v. Anderson*, 2 Cir., 67 F. 2d 889; *Motter v. Bankers Mortgage Co. of Topeka, Kan.*, supra; *Hamilton Nat. Bank v. United States*, 6 Cir., 99 F. 2d 570; *Central States Life Ins. Co. v. Sheean*, supra; *United States v. American Trust & Banking Co.*, 6 Cir., 125 F. 2d 113; *Pennsylvania Co. for Insurances, etc., v. Rothensies*, supra."

The attached instruments declare on their face to be a contract for the performance of certain things to be done in the future and for the payment therefor to be made in installments. There seems to be no interest conveyed in the Floral Hills Memorial Chapels, Inc., by this instrument as far as can be determined from their content.

#### CONCLUSION

It is, therefore, the opinion of this department that the attached Provisional Covenants for memorial rites at Floral Hills Memorial Chapels, Kansas City, Missouri, do not constitute securities under the Missouri Securities Act.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

JWfab