

BLUE-SKY LEGISLATION

by

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Table of Contents.

Blue Sky Legislation

Chapter I.

Evils Associated with Investments in Economic Enterprises or in Their Corporate Securities.

1.	The Natural Optimism of Human Nature Regarding Promising Ventures	Pages 1-4
2.	The Lax Corporation Laws of Various States.	4-7
3.	Promotion Schemes of To-day-- Legitimate and Otherwise	7-9
4.	A. Extent of Fraudulent Promotion	9-14
	(a) Postmaster-General's Annual Reports	9-12
	(b) Bank Commissioners' Reports	12-13
	(c) Other Sources of Information	13-14
	B. Concrete Cases of Fraudulent Promotion	14-33
	(a) Mining Schemes	15-24
	(b) Land Schemes	24-25
	(c) Insurance Schemes	25-30
	(d) Industrial Schemes	30-31
	(e) Loan Schemes	31-33
5.	Suppression of Fraudulent Promotion by Government Agencies	33-49
	(a) By the United States Post-Office Department	33-37
	(b) By the Supervision of Public Utility Commissions in the United States	37-41
	(c) By the 'Companies Act' in England	41-45
	(d) The Work of the Central Association of German Banks and Bankers	45-47
	(e) Through the Means of "Blue Sky" Legislation in the United States	47-49

Chapter II.

The Evolution of "Blue Sky" Legislation. 49-79

- | | | |
|----|---|----------------|
| 1. | The Definition and ^p Scope of "Blue Sky" Legislation | 49-52 |
| 2. | A. Preliminary Experiment by the Bank Commissioner before the Enactment of the Kansas Law | 52-56 |
| | B. Legislative Enactments in Kansas Controlling "Blue Sky" Operations. | 56-70 |
| | (a) Act of 1911 | 56-60 |
| | (b) Act of 1913 | 60-64 |
| | (c) Act of 1915 | 64-70 |
| 3. | "Blue Sky" Legislation in Other States
Comparison of Statutes | 70-72
72-79 |

Chapter III

Court Decisions Pertaining to "Blue Sky" Legislation 79-112

- | | | |
|----|--|---------|
| A. | Laws Held Unconstitutional by the Courts | 79-100 |
| | 1. Michigan | 79-83 |
| | 2. Iowa | 83-88 |
| | 3. West Virginia | 88-93 |
| | 4. South Dakota | 93-95 |
| | 5. Ohio | 95-100 |
| B. | Laws Sustained by the Courts | 100-112 |
| | 1. Kansas | 100-104 |
| | 2. Florida | 104-105 |
| | 3. Arkansas | 105-110 |
| C. | Summary Statement | 110-112 |

Chapter IV.

The Attitude of the American Investment Bankers Association and Others Toward "Blue Sky" Legislation. 112-130

- | | | |
|----|---|---------|
| 1. | The Attitude of the American Investment Bankers Association | 112-124 |
| 2. | Report of a Special Committee in Minnesota. | 124-127 |
| 3. | Position taken by the Bankers Magazine | 127-128 |
| 4. | Opinion expressed in the Wall Street Journal | 128- |
| 5. | Attitude of Insurance Commissioners | 128-129 |
| 6. | Summary Statement | 129-130 |

Chapter V.

Results of the Operations of "Blue-Sky" Laws in Kansas and in other States. 131-151

- | | | |
|----|---|---------|
| 1. | The Experience in Kansas | 131-144 |
| 2. | Opinions with Reference to What "Blue-Sky" Legislation has Accomplished in Other States | 144-150 |
| 3. | Conclusions. | 150-151 |

Bibliography.

1.	The "Blue Sky" Laws of the various States- citations-	152-153
2.	American Investment Bankers Association, Convention Proceedings,	154
3.	Bulletins of the American Investment Bankers Association- Reference to Articles contained therein.	154-155
4.	Proceedings of the National Convention of Insurance Commissioners	155-
5.	Periodicals	156-159

Appendix.

Appendix I.	"Blue-Sky" Legislation in the United States-Tabulation of the Laws.	159-213
Table 1.	"Blue-Sky" Laws Enacted by Various States and Officials Enforcing the Same.	159-160
Table 2.	Exemptions ^{under} to "Blue-Sky" Laws in Var- ious States	161-167
Table 3.	Method of Qualifying and Expense Involved	167-173
Table 4.	Dealings in Securities not coming within the Embrace of the "Blue- Sky" laws	173-182
Table 5.	Information Required when Making Application for license	182-194
Table 6.	Supervision after License is Secured	194-201

Table 7. Appointment of Receiver for Investment Companies	194-201
Table 8. Appeal in Cases of Refusal to Grant Permit	205-210
Table 9. Executive Departments Especially Created or Delegated to Enforce the Act	210-213.
Appendix II. "Blue-Sky" laws of Kansas	213-243
Table 1. The Original "Blue-Sky" Law of Kansas (1911)	213-220
Table 2. The Amended "Blue-Sky" Law of Kansas (1913)	220-228
Table 3. The Present "Blue-Sky" Law of Kansas (1915)	228-238
Appendix III. Proposed law as prepared by the Counsel of the Investment Bankers' Association with the additions suggested by Mr. Richards representing the National Association of State Bank Supervisors	238-243
Appendix IV. Statements Required to be filed with the "Blue-Sky" Department in Kansas	243-261
Table 1. Of Domestic Companies	243-249
Table 2. Application for Authority to Engage in Business in the State of Kansas as a Foreign Corporation	249-252
Table 3. Of Land Companies	252-257
Table 4. Form for Quarterly Reports	257-261
(a) For Domestic & Foreign Corporations	257-260
(b) For Land Companies	260-261

1

Evils Associated with Investments in Economic

Enterprises or in their Corporate Securities.

1. The Natural Optimism of Human Nature Regarding Promising Ventures.

Probably the most important and fundamental reason for the exploitation of the public by promoters of fraudulent securities is the prevalence of the gambling instinct. As Adam Smith, in "The Wealth of Nations", says; "The chance of gain is by every man more or less over-valued, and the chance of loss is by most men undervalued, and by scarce any man... valued more than it is worth."⁽¹⁾ This tendency seems to be based upon the absurd belief that Divine Providence will in each instance make a special dispensation in favor of the particular person trusting to luck that he will win something without paying a corresponding price.

No better illustration of this illogical conduct can be found than in the ancient institution of lotteries in their various forms. "The world neither ever saw, nor ever will see, a perfectly fair lottery,

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(1) Edwin Cannan Edition of Adam Smith, Vol. 1 pp.109-110

or one in which the whole gain compensated the whole loss; because the undertaker could make nothing by it... The vain hope of gaining some of the great prizes is the sole cause of this demand (for lottery tickets). The soberest people scarce look upon it as a folly to pay a small sum for the chance of gaining ten or twenty thousand pounds, though they know that even that small sum is perhaps twenty or thirty per cent more than the chance is worth." (1)

The chief attraction of the lottery is the fact that only a small sum is being risked, with the possibility, however slight, of gaining a great fortune. This is also true of other speculations. "The very small investor is the most inveterate bargain hunter in the world... The middle class investor thinks more of safety, and of a fair income than he does of profit; and if he seeks profit at all, his demands are moderate and conservative... It is the small investor who always wants a hundred per cent on his money and who is willing to take the most astounding chances to get it." (2)

No proposition can be too absurd to appeal to a great number of such "investors". At one time a company was organized in London "To Carry On an Under-

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 (1) Edwin Cannan Edition of Adam Smith, Vol I, pp 109-110
 (2) C.M. Keyes, World Work, Vol.22, pp14922

taking of Great Advantage, but Nobody to Know What it is". "The prospectus stated that the capital was one-half million in 5000 shares of 100 pounds each, on which the deposit was two pounds. Each subscriber on depositing was to be entitled to 100 pounds per annum per share. The projector opened his office in Cornhill, and before he shut it and decamped at three o'clock the same day he had secured 3000 pounds in deposits of two pounds. The end of another company which seemed to be of a similar class was happier. An office was opened in Change Alley at which investors were invited to subscribe a million sterling for some object or other not too particularly specified. The installment payable on application was 5 s. a share, and the reckless rushed to make their fortunes. It was not until a very large sum had been subscribed that an advertisement appeared informing the subscribers that on calling at the office they might obtain the return of their subscriptions. The supposititious undertaking, it was explained, was merely an experiment to test the question as to how many (1) fools could be caught by such means in one day."

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(1) The Story of the Stock Exchange, Charles Duguid, pp.40-41.

2. THE LAX CORPORATION LAWS OF VARIOUS STATES.

Lack of uniformity and laxity of some of the state corporation laws afford an excellent opportunity for unscrupulous promoters to exploit those possessed of the gambling instinct. In the United States, the privilege of incorporation is given under widely different statutory provisions. Charters are granted by individual states, whereas, the activities of the corporations may extend over several states, and in many cases the whole or greater part of the corporation's business is carried on, not in the state granting the franchise, but in other states of the Union. The different states are led to vie with each other in order to influence prospective companies to take out their letters of incorporation from them, and in this competition the tendency is to grant more and more liberal franchises. In their rivalry to attract as many corporations as possible for the sake of revenue, some states will yield to the insistent demands of those interested in securing favorable franchises. This competition existing between the states and the lack of uniformity in the corporation laws, has given rise to serious complications and is the main obstacle to the proper regulation of corporations in the United States.

The state corporation laws differ greatly in the amount of information required concerning the affairs of the corporation and there is wide diversity in the powers granted. The rights to hold stock in other corporations and the rights to issue stock for other than cash considerations differ. In some of the states it is unlawful to issue stock for services and there are various restrictions placed upon the exchange of stock for property. The number of purposes for which a corporation may be formed are limited in some states, as for example Texas. Restrictions are placed upon the right to hold lands, and still others prohibit the exercising of certain franchise rights by foreign corporations. Then too, there is considerable difference in the requirements as to the amount of stock that shall be subscribed and paid for before actual business operations are begun. Likewise, in the amount of fees that are to be paid, and the character and number of reports required. There is dissimilarity in the length of the terms of licenses, and there is much variation in matters relating to the place of holding meetings, the requirements as to the residences of directors, publicity, and in a host of other minor details.

It may be well to cite a few examples of states having what may be called strict, as well as of those

having lax corporation laws. Pennsylvania and Texas are good examples of the former, whereas, South Dakota and Delaware are typical "bargain counter" states.

There are great differences in the amounts paid for the original license fees and the annual taxes levied upon corporations in these states. In Pennsylvania the initial license tax is based upon the capital employed within the State. In Texas it is based upon the entire capital stock of the corporation. The Pennsylvania license fee varies from \$3.33 per \$1,000 capital employed in the state, to \$16,666.67 for a corporation employing a capital of \$5,000,000 and the annual fees vary from \$5.00 in the former case to \$25,000 in the latter. In Texas an initial charge of \$50.00 is made for a corporation capitalized at \$1,000 and \$5,040 for one capitalized at \$5,000,000. The annual license fees are \$25.00 and \$860.00 in the respective cases.

The initial filing fees in South Dakota and Delaware are fixed without regard to capital or the amount employed in the states, and a fixed sum of \$10.00 is charged in both states. Neither requires a corporation to pay an annual license tax. These two states are examples of "bargain counter" states, so far as incorporation expenses are concerned and their

legislatures are obviously making a bid for the cheap incorporation business. Other requirements are about as lax, and a great many companies which are organized to exploit mines or new inventions, or other highly speculative enterprises, may without impropriety issue large amounts of stock, although the actual market value of their assets at the time of incorporation may be very small. In such cases it is customary and obviously economical to secure a "bargain counter" charter.

Thus it is possible for the highly-speculative and fraudulent enterprisers to secure charters in the states having lax standards, and then to conduct their business in the other states. It has been customary for the so called "blue sky" concerns to incorporate in such states as South Dakots, Delaware and Arizona, and then to go into the states having the stricter laws to sell their securities. The general tendency to confer broad powers and to impose lax standards is hazardous, and offers great opportunities for fraud. Lax state corporation laws have thus been largely responsible for the exploitation of the public by promoters.

3. Promotion Schemes of To-day--- Legitimate and Otherwise.

The securities of thousands of both legitimate and illegitimate promotion enterprises are annually offered to the public. The newly organized corporation

may try to dispose of its own securities directly to the investor or it may sell them through such agencies as investment and banking institutions. The legitimate enterprise, will in most cases, dispose of its securities in the latter way. The illegitimate promotion scheme seldom reaches the investing public through the agency of investment bankers or like institutions, but sells its securities through agents representing the company itself or through the use of the United States mails. Securities sold by investment bankers may be cited as an example of those which are considered of a legitimate character. Investment bankers make an effort to handle securities only of such concerns as are likely to prove reliable and thus to protect the investing public against the purchase of such securities as are likely to be of a fraudulent character. The owner is first requested to submit complete data regarding the company, which is then analyzed by the investment banker. If no weakness is disclosed, the formal examination is then made, consisting of an investigation by engineers, the auditing of the corporation's accounts and a careful legal examination of franchises, etc. With searching scrutiny every factor bearing upon the merits of the enterprise is likely to be considered. If the company stands the tests of the investigation, the investment banker will supervise the sale of the securities of the newly promoted enter-

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prise. It is not, however, with the sale of the securities of legitimate enterprises that this thesis is most vitally concerned; it has to do rather with the regulation of the sale of the millions of dollars worth of fraudulent stocks, bonds, and other securities, which are annually distributed to the "gullible" investors of this country. Hence, the following discussion will treat of the extent of fraudulent promotion in the United States and will disclose the methods whereby swindlers are able to sell their fictitious paper securities, and thus exploit and public.

4. Extent of Fraudulent Promotion.

(a) Post-Master General's Annual Reports.

A crusade was started in 1910 by the Post-Office Department against the fraudulent use of the mails by companies selling worthless securities. From the investigations which were made, it became evident that swindling operations were being conducted on an extensive scale. In the report of the Post-Master General in 1910, it is stated "that the 80 important cases recently brought to a head represent swindling operations that have filched from the American people in less than a decade fully \$100,000,000. As the work of investigation proceeded it became apparent that the schemes for swindling through the mails were vastly more numerous and extensive than had been supposed. Many of

these fraudulent enterprises proved to be as far reaching in their ramifications as the postal service itself. Not only have they swindled many thousands of credulous people out of money foolishly invested, but to a large extent they have shaken the confidence in legitimate enterprises. The stamping out of these frauds is therefore as important to capitalists engaged in lawful business undertakings as it is to investors. Their prevention will undoubtedly save to the American people millions of dollars annually." (1)

The annual report of 1911 states "That the crusade against the fraudulent use of mails, begun in 1910, has been aggressively continued. Last year the inspectors assigned to this work investigated a great variety of cases ranging from petty schemes for the commitment of fraud on a small scale to gigantic projects in imaginary mining companies and other fictitious concerns. The swindlers convicted had fraudulently obtained from the public many millions of dollars." (2) In his official report to the Post-master General, the Chief Inspector said; "the work of the past year has uncovered a condition among the swindling class which

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(1) Annual Report of the Post-Office Dept. 1910, pp.12-13.
 (2) " " " " " " " " 1911, p.27.

shows the astounding extent of their operations and the enormous amount of their ill-gotten gains. As shown elsewhere in this report, only the few swindling promoters who were arrested last year obtained approximately \$77,000,000." (1)

The 1912 report states that "in the last two years over 1,000 persons have been arrested by post-office inspectors for such swindling, and it is estimated that the losses to the public, through their fraudulent operations amounted to over \$100,000,000." (2) In the 1913 report it is estimated that a "total of \$53,873,841 was taken in by those arrested and convicted during that year." (3) From the reports submitted by the inspectors covering the cases in which arrests were made during the year ending June 30, 1914, it is estimated that the promoters of these fraudulent schemes obtained approximately \$68,000,000. (4)

These reports of the Post-master Generals would justify one in believing that the toll which fraudulent promoters have annually been taking through the United States mails would approximate \$100,000,000, and it is

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- (1) Annual Rpt. of the Post-Office Dept., 1911, p. 64.
 (2) " " " " " " " 1912, pp 15-16.
 (3) " " " " Postmaster Gen. 1913, pp 99-108.
 (4) Rept. of Postmaster General, 1914, p. 46.

more likely that the tolls have been easily in excess of that figure.

(b) Bank Commissioners' Reports.

Various estimates have been made by bank commissioners and others as to the probable sums lost through fake investments. Mr. J. N. Dolley in a letter dated December 16, 1910, said: "I find that Kansas has been tolled millions and millions of dollars during the past few years by these confidence men, and ninety-eight per cent of the money so paid has been entirely lost by the investor. As nearly as I can ascertain, they are tolling Kansas at the rate of somewhere between one and three million dollars per annum". In an article appearing in the Bankers Home Magazine, he says that "at the time the law (speaking of the first Kansas Blue Sky Law" went into effect there were between four and six millions annually being taken from Kansas which was absolutely lost to the investor as well as to the State of Kansas". In commenting upon these estimates Mr. S. Seaton (special assistant to Bank Commissioner Benson) says that he believes that the minimum sum named by Mr. Dolley is conservative and, considering the richness of the field, it would be about Kansas' share of the tribute that the people were undoubtedly paying to this modern form of piracy.

Prior to the enactment of the Oregon "Blue Sky"

law, that state seems to have been over-run by the promoters of fraudulent enterprises. The Commissioner of that state made the statement that " in 1912 the United Wireless Company sold in Oregon \$800,000 worth of stock that turned out to be worthless. In the same year the Columbia River Orchard and Irrigation Company disposed of a million and a half in the state. The bonds were not worth the paper they were printed on. The promoters of both of the concerns were prosecuted, but their punishment did not restore the vanished dollars." (1)

In 1912, Governor Colquit of Texas said, among other things, in his message to the legislature: "The Commissioner of Insurance and Banking estimates that the people of Texas are being fleeced now out of five million dollars annually by corporations that have no capital, no stability and no business foundation."

(c) Statements from other Sources.

Financial writers and others who are well informed almost unanimously agree that the sums annually lost through fake investments exceed \$75,000,000 and they point out that there is a constantly flowing stream of money from the hands of hard working people to those of

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(1) Sunset Magazine, Feb. '13.

rascals. In the *Worlds Work* for March 1911, there is a list of fraudulent promotion schemes compiled by the editor of the "Financial World", most of which operated in the State of New York. In this list there are enumerated forty-two oil companies, with a total capitalization of \$83,448,128; one hundred-nine mining companies with an approximate capitalization of \$527,882,500, and eighty-three companies classed as miscellaneous with an approximate capitalization of \$448,269,780. "Taken as a whole" says, C.M. Keyes, "this list may be considered a machine that has taken from the people of the United States, close to \$1,000,000,000 in the last seven years and it is practically only the New York list." There are enumerated also fifty-six companies whose officers were arrested by the Government on charges of fraud, six whose officers were in hiding, and thirty-eight big frauds which have gone unpunished.

From the information given in the annual reports of the Postmaster Generals, the statements of Bank Commissioners and others interested in financial affairs, it is evident that many millions are annually lost by people investing in fraudulent and unwise promotion schemes.

4. (B.) Concrete Cases of Fraudulent Promotion.

The following discussion will deal with some of the more typical and concrete cases or forms of fraudu-

lent promotion. In general these may be grouped in five main classes, namely, (a) mining, (b) land, (c) insurance, (d) industrial enterprises and (e) loan schemes. Many examples might be given for each of these classes, but only a few are necessary for the purpose of illustrating the character of the schemes and the methods employed in promoting the same.

(a) Mining Frauds.

While the method of the modern fraudulent promoter is based upon the same principles as those mentioned earlier in this chapter, and his appeal directed to the same class of investors, his mode of procedure is now infinitely more elaborate than formerly. A number of causes have operated to bring about this change. The standard of education among his clients is higher today, and, at the same time that credulity is played upon, there must be an appeal to judgment, real or imaginary; certain efforts have been made to warn these people against fraudulent enterprises, and some suspicions must always be allayed; finally, there is considerable competition among the promoters themselves, and the prize is to the shrewdest. A detailed account of a single case will best illustrate the "public campaign of education on the logic of true investment" which the self-styled "fiscal agent" now conducts.

The literature used by a certain promoter in

advancing the interests of a mining scheme, known as the Boulder Tungsten Production Company, will furnish examples of the various steps in the process which has been described as follows: "All this mass of skillfully arranged data leading the mind almost imperceptibly from the known to the unknown, emphasizing advantages to the point of exaggeration, glossing over difficulties, or, preferably, remaining silent about them, marshalling history, science, and reputation to the support of prophecy... all these specious and forceful arguments are directed to the end of creating in the mind of the prospective buyer a vision of enormous wealth." (1)

The first move of the promoter of The Boulder Tungsten Production Company had for its object the establishment of confidence on the part of the person answering his advertisement in his authority and integrity. To this end he sent out material containing an account of his broad experience and information, and his interest in the welfare of the masses. All this was vouched for by strongly worded testimonials from apparently reliable sources, together with clippings from well-known newspapers.

At the same time he offered to send, free of charge, a copy of his treatise on "The Science of In-

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(1) Edwin S. Mead, Corporation Finance, pp.139-40.

vestment" and an introductory number of the magazine "Investing for Profit". This was, of course, done in a perfectly disinterested spirit, with no hint of any definite enterprise to be promoted. A study of this literature reveals the skillfully graded steps by which the subject is changed from the general to the specific.

The initial purpose of the "campaign of education" is stated to be to teach "(1) that money, when employed in proper channels, is enormously productive. (2) that a large proportion of the people are in absolute ignorance of that fact. (3), that a policy of deliberate concealment of the fact is consistently followed by the capitalist" together with the reasons for the same.

He begins his exposition with the following statement: "It is undoubtedly the fact that a large section of the public are actually frightened by estimates showing that large earnings are both possible and probable in any special enterprise. Tell one of this class that 25% to 40% will accrue as the result of his investment and he will cry or think, "Get-rich-quick-scheme." Men who should know better will assert that money can only earn 5% with safety. This belief, widely prevalent, is one of the most astonishing errors the founders of a new enterprise have to combat... We seek to show by this article that the reproductive power of money is enormously in excess of 5%, and that this fact is known very

well by the very men who preach the doctrine."

Numerous examples are then cited, showing the enormous earnings of certain well known corporations; how these earnings are concealed from the public through the watering of stock, either by the creation of new securities or by permitting stockholders to buy at par stock which is selling on the market at a high premium; how the shareholder makes from 40% to 300%, while the investor in bonds and securities gets a return of 5%. The inference is obvious, viz. in order to take full advantage of the earning power of money, the investor must buy, not bonds, but shares of stock in some corporation.

The essential similarity of depositing money in a bank and investing in a corporation, and the advantage of the latter is demonstrated by the following argument: "When you buy shares of stock in a corporation you simply place your money in the custody of third parties, who in the legal capacity of your trustee, direct its expenditure along certain lines in the expectation that it will become reproductive, and the full profit on the capital invested be paid you as a result. When you place your money in a bank you do nearly the same thing, the chief distinction being that you only receive a part of the profit your money earns. You, however, entrust your money to the control of third parties, precisely as you do in a corporation.... Bitter pills are often sugar-

coated, and the advice to put your money into a bank, or the warning that but 5% can be earned on money invested with safety, is simply another way of stating the disagreeable fact that your advisor has his own opinion of your ability or shrewdness, which, summed up in a few words, is to the effect that you need a guardian in the disposition of your surplus money." Depositing money in banks is an expression of the savings habit, the "fallacy" of which is exposed at great length.

" ' I should like to see,' said U.S. Circuit Court Judge Grosscup, 'well managed corporations popularized through the ownership of their securities by great numbers of people with small means, so that savings banks will decline in popularity and their deposits dwindle.' That is true money-making philosophy and the men who get into a well managed, honestly conducted corporation with its future before it, will make money now as others have done in the past."

This leads to the constructive program. "In other words, the secret of success in investment, as well as in life, lies in the application of that old proverb: 'If you want a thing done well do it yourself.' Achieve success by doing what your commercial banker does to achieve success.... Here is your recipe for success: First-- Learn the Facts: Second-- Use Your Own reasoning powers; Third- Decide for Yourself."

"The men with sufficient judgment to discern the

possibilities and the courage to back their opinion, are literally swept forward to fortune's bower by the public demand. Thus are stupendous fortunes achieved. 'One good investment is worth a life-time of labor.' "

The specific field in which such investments can best be made is developed in a masterly manner as follows: "The smaller industrial corporations afford this opportunity. They are in their younger years, practically associations of enterprising men, who, placing their funds in one common pool, use it in one stated direction judged to be profitable, and divide its full earnings equally amongst its members.... If you wish to gamble, well and good, but if you wish to invest under conditions where ripe judgment, commendable initiative and judicious courage are likely to reap their proper reward, give your time to an earnest investigation of the possibilities offered by the many new enterprises with which this broad land is pregnant.... Throughout this broad land of ours men are delving into nature's treasures, inventing, discovering, originating and imitating. They have the opportunity for capital and seek out the men with capital for opportunities.... Watch for great industrial opportunities. A hundred million people are now crying aloud for potash and dyes and spelter and copper and tungsten, through the dearth caused by the European war."

The prospective customer now having been properly educated, the transition from general principles to a

specific opportunity for investment is made as gently as possible. "I am going to do a thing in this column this month that I have not done before. I am going to make a direct recommendation of a particular investment.... This particular investment about which I am writing has stood my rigid tests. It conforms in every respect with the rules I lay down, as explained in the Science of Investment."

Then follows an account of the discovery of the great industrial value of tungsten, its use in the manufacture of munitions of war, and the resultant demand for this mineral since the outbreak of the present war. "For an opportunity of larger profits than any I know to be had elsewhere, and carrying the element of permanency as a factor in an uncommonly high degree, I recommend an investment in the tungsten industry. So far as I know, and I believe I have the facts on this subject, the Boulder Tungsten Production Company, which my financial department represents as my fiscal agent, is the only tungsten company in which an investment may be had at this time."

A number of quotations from the circular letters which succeeded this recommendation of the Boulder Tungsten Production Company will illustrate the method of procedure, now frankly that of the fraudulent pro-

moter.

"Fifteen dollars "WON'T BREAK YOU and it WON'T "MAKE" ME, but it might "MAKE" YOU, and it might be the means of making you rich. Fifteen dollars is not a great sum of money, and I don't mean to infer that a \$15 investment will make a millionaire of you. Please don't misunderstand me. I do believe though, and sincerely so, that a \$15 investment in the stock of the Boulder Tungsten Production Company will result greatly to your advantage, and it may be the stepping stone to a substantial income, or possible a fortune for you."

The future of the new company is compared with the success of a well known corporation manufacturing safety razors. "For illustration, we will say that the Gillette Safety Razor Company, started at \$25,000. It was raised to \$650,000 which was 25 times the original \$25,000 in addition to it. That would mean that each \$15 originally invested gathered for, its owner, in addition to earning yearly dividends, 25 other \$15s, so that the original investor of \$15 would have \$390 of the capitalization of \$650,000. The new capitalization of \$13,000,000 being 20 times the former capitalization would make an original \$15 investment, now grown to \$390 worth of shares, each now earning \$390 per year more, worth in the new capitalization, in shares 20 times \$390 or \$7,800-- all from \$15.... I am giving you

the chance right here to invest \$15 in a vigorous industry that I am confident is going to be a big success. I would be foolish to assert at this time that it will be as profitable as the one I have just told you about, because the company has not yet explored all its land. But the facts are now at hand to indicate infinitely greater profits."

In another letter the expected profits are characterized in these terms: "An investment that carries such well indicated potentiality of several hundred per cent profits yearly, is worthy the consideration of intelligent persons who want to make HONEST money- and mining money is the CLEANEST MONEY IN THE WORLD, because you do not take anything away from anyone else, BUT ENRICH THE WORLD by adding to its useful mineral supply."

Numerous testimonials and clippings are given praising the character and good judgment of the promoter and supporting the newly launched mining enterprise. Assurance is given that the company is already capitalized, that the available stock is limited, and as a final bit of sarcasm the right is reserved of returning the money which has been paid by the investor for shares of stock in the corporation. Through the means of this skillful advertising, the fraudulent promoter is able to secure his "investor." "When once embarked on a doubtful enterprise, the speculator is im-

pelled by sentiment and interest to draw others along with him. The speculator is by instinct a promoter. He is a zealous advocate of this project to which he has committed his money. He urges upon his friends the merits of the new scheme. His enthusiasm is infectious. Others are drawn into the net by his representations, and they in turn compass sea and land to make one proselyte. In this way the wave of speculation is set going and sweeps through all classes of society, turning the accumulations of years of effort into the treasures of the new companies." (1)

(b) Land Frauds.

Fraudulent land schemes have been very common. The Postmaster General in his report for 1913 mentions the "International Lumber and Development Company" as such a scheme. "The ostensible business of this concern was to clear, plant, and bring to a high state of tropical culture 20,000 acres of land located in Mexico. My contracts entered into by the several promoters in control of this company certain of them were to receive \$50.00 while others were to receive \$250.00 for every share of stock sold, for which the latter promoters were to clear and develop one acre of land. Thousands of unfortunate purchasers of contracts were unable to make their monthly payment and were lapsed out. The stockholders number more than 7,000 scattered throughout the

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(1) Edwin S. Meade- Corporation Finance, p.142

United States, Canada and Europe. Dividends were paid from the proceeds of the sale of stocks. It is estimated that the promoters of this scheme filched from the public approximately \$6,000,000." (1)

Only recently Moun Day and his wife were convicted of promoting an enterprise for the irrigation and sale of a large tract of land belonging to Senator Catron. Hundreds of persons in twenty states were induced to buy contracts for the land and to pay large sums for them. It was estimated that not less than a quarter of a million dollars had been collected by the Moun Days.

Land frauds have been a common method to filch the gullible public. People have been led by the thousands to invest their savings in lands to which the promoter did not have a title; in lands which, if the promoter had been a little more truthful he would have sold by the barrel rather than by the acre.

(c). Insurance.

The workings of an Insurance swindling scheme were exposed in an article written by Mr. Keyes in the World's Work for September, 1911. (2) This was the "United Insurance Company", the promoter of which was a Mr. Van

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(1) Report of the Postmaster General, 1913 p 99:

(2) World's Work, 14,882-90 S'11.

Lartingham. A charter was secured in Arizona authorizing the company to write any kind of insurance, and the articles of incorporation provided for an issue of 10,000,000 shares of stock at a par value of \$1.00 a share. In 1908, "the greatest insurance company the world has ever seen" was organized and an office was opened in Chicago. There was nothing cheap upon the face of the concern. It had most elaborate offices and furnishings and the excellent engraved stationery gave evidence of a thriving concern. A "whirlwind" advertising and selling campaign was launched immediately. Agents were scattered over the country and the price of stock was raised from the par value of \$1.00 and fixed at \$5.00. All classes of people were lured into the enterprise. "The agents were lured on by offers to make them special representatives of the company in their districts; doctors were coaxed into subscribing by promises to make them examiners; the lawyers were caught by veiled insinuations that they might be able to handle a great deal of the legal business in their respective towns and the banks were induced to subscribe by half promises that, as the business grew, deposits would be opened in their banks." The first year's business was conducted chiefly in the middle west. Then the headquarters were changed to New York City. Finding New York too strict the plan was deter-

mined upon to "create subsidiary companies for the different lines of insurance, and New York state was elected as the place in which to take out a fire insurance charter. This was done in January, 1910, when the United Fire Insurance Company of New York was launched." The promoter, Mr. Van Larsingham, withdrew from the company at this time, not however until he had succeeded in receiving \$7,500 worth of securities and 1,539 shares of stock from the corporation. Before the New York Insurance Department intervened the company had sold approximately 65,629 shares of stock and realized about \$166,000 in cash; \$1,000 in other securities and \$68,000 in notes. This was the extent of the company's business covering a period of approximately one year and five months. The report of the Insurance Department shows "that for every \$100 par value of stock sold to the public, the commissions, traveling expenses, salaries, and advances to salesmen, amounted to \$140.00 Additional costs in the nature of officers' salaries, stationery, postage, rent, etc. brought the total up to \$242.00. " Less than one eight of the \$176,000 remained as a real asset for the benefit of stockholders and there was only the little residue of \$8,560 left as total assets by the time the business came into the hands of the stockholders' committee.

The question may be asked, how did the company go about securing subscribers? The methods used in this

case are typical of most swindling schemes. Preliminary announcements were first made to prospective customers by sending to each one a personal letter, stating the extraordinary character of the company, its wonderful possibilities and urging the individual to act at once in order to take advantage of this remarkable opportunity. THE form of the letter used in this particular case was as follows:

"Dear Sir:-

Your state is about to be entered by the largest insurance Company in the world. A company equipped with unlimited resources in money and skill. The unprecedented capital and surplus of fifty millions is to be put forth in a colossal, combined, energetic effort to systematically secure the business in every territory.

"Every nook and corner, every town and hamlet, is to receive the attention of our organization. Our agencies will dot the map of all countries. The enormous strength, accurate methods, and relentless efforts, both public and private, of this company will defy competition.

"Staunchly backed by the most successful men known to the insurance world-- men of sterling character men whose co-operation and direct financial and personal interest assures success- men whose record as leaders is proven, men whom you know as being most thorough and ex-

pert in the intricacies of insurance. The preliminary investigation of our officers has placed your name in our hands as a progressive, and, therefore, interested party. If you will agree to hold all matters strictly confidential and will signify same by filling out the enclosed card, we will loan you our own confidential booklet.

"Remember, however, that this book is of considerable value. It is to be returned or taken up at our expense. Let us have your reply at once and we will send to you information, every word of which will be of vital interest and contain a proposition such as has never before been put forth. It is of much importance to you to act at once in this matter."

Do not delay.

Respectfully yours,

(Signed)

"51 Lines under one executive control."(1)

If one gives this matter his serious consideration the company follows by giving definite offerings. All sorts of special privileges, concessions in price, directorships, agency contracts, and the like are offered. The class of people who are looking for the chance to secure something for nothing soon fall victims of these professional swindlers.

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(1) World's Work, 22: 14882-90, S'11.

(d) Industrial Frauds.

Numerous examples of industrial frauds could be given. One company, the "Sterling Debenture Corporation", was successful in selling large amounts of stock to citizens of Kansas and other states, in what were termed the "Telapost" and the "Oxford Linen Mills" companies. The Burr Brothers have also become famous as promoters of swindling industrial and mining schemes. These brothers, who had headquarters in New York City and are generally accredited with having been the most successful promoters of worthless stock in this country, made extensive use of industrial enterprises in their fraudulent operations. The Burr brothers rented one entire floor of the Flat Iron building in New York City and proceeded to sell stocks in at least 28 different companies, until their operations were stopped by the postal inspectors in 1910. Not one of the 28 companies for which the Burrs sold stock, has ever paid a dividend and at least 17 of them have gone out of existence. Two of the industrial enterprises in which the Burrs sold stock, were the "New York and Chicago Electric Company" and the "Talkaphone Company".⁽¹⁾

The postal inspectors who raided the office and arrested the members of the company in 1910, estimated that they had taken in somewhere between forty and fifty millions of dollars. Dolley estimates that they sold at least one-half million in Kansas. The Burrs had a

(1) See article by H.F.Kohr, Tech World, Mr. 1912, p. 45

prosperous business and had just entered upon an advertising campaign which would have cost \$1,000,000 when the postal authorities arrested them. The Postal Inspector said: "the Burr Brothers played fast and loose with their clients and the most pitiful feature is the manner in which widows have been fleeced on absolutely worthless stock. One widow had invested \$4,000, the amount of life insurance she had received at her husband's death, in worthless mining stock. Another poor widow, with a large family had invested all her savings, \$2,500, in absolutely worthless oil stocks." "The first days mail after the raid brought in \$650 in cash and \$20,000 in money orders, in addition to which there was a large bunch of telegrams, making reservations of stock from deluded victims who were afraid they would lose the chance to be swindled out of their money. There was a perfect flood of the small orders (\$2.50 to \$9.00) mostly accompanied by letters written in the uncertain
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hand of the ignorant."

(e) Loan Swindling Scheme.

More recently loan swindling schemes of various kinds have been in operation. In a warning recently issued to the public of Kansas, Mr. Seaton calls at-

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(1) Technical World Mag. Vol. 17 p 45 Mr. 1912.

tention to types of "mail order Loan and Investment Companies" which have been making a vigorous campaign in Kansas. The usual plan of business, it is stated, "is to offer the investor a contract calling for the monthly payment of various sums for a period of from eighty to one hundred months. After the payment of a certain number of installments, usually six, the investor becomes "eligible" to receive a loan; but when, or whether the investor will ever receive a loan, depends not only on the number of his certificate, but upon the further chance that the company will sell enough more contracts to provide the money with which to make the loan." This sort of contract has been declared to be nothing less than a lottery scheme, as well as fraudulent by the courts of many states.

The Standard Bond and Mortgage Company operating from Birmingham, Alabama and the Continental Mortgage and Deposit Company, which is supposed to do business from several places, including Denver and Chicago, are examples of loan swindling schemes. In either case, you buy a contract and pay in so much money in installments; then you become "eligible" for a loan when there is sufficient money in the loan fund, and the number of your contract is reached. Once in a while they "spot" a loan in a community for the purpose of "baiting" investments, but the writer has yet to find a single instance in which any of these companies have made a bona-

fide loan to an investor.

5. Suppression of Fraudulent Promotion by Government Agencies.

From what has been stated, it is evident, that a great amount of fraudulent promotion has been carried on in this country. Millions of dollars are annually lost in investments in fake land schemes, in mining and insurance frauds, and in industrial and other swindling operations. What has been done to check these evils? The following discussion will attempt to answer this question and will deal with the various agencies and methods which have been used to check the sale of the securities of these fraudulent promoting enterprises. In general, it may be stated that the agencies at work in this country have been the "Post-Office Department", the "Public Utility Commissions", and the so-called "Blue-Sky" laws. In England, the "Companies Act" has been enacted as a means of remedying the evil, and in Germany the "Central Association of German Banks and Bankers" has assisted much in the suppression of the sale of unsound investment securities.

(a) By the Post-Office Department.

As has been mentioned before, an aggressive attitude was not taken by the United States Government against the fraudulent use of the mails until 1910. Previous to this time it had been the practice of the

department to content itself, in the case of a detected swindler, with issuing what was called a "fraud order." By this method the offending concern was deprived of the use of the mails. This checked his criminal activity for a time, but the excluded concern was soon organized under another name and thus evaded the law. The new plan adopted in 1910 was to arrest, indict, and prosecute the guilty officers, to confiscate the tools of their trade and to bring the criminal business to an end. In order to secure a definite idea as to the activity of the Post-Office Department in its crusade against the swindlers, it is well that we consult the annual reports of the Postmaster-Generals.

In the report for 1910 it is stated that "during the last few months the principal officers of 34 corporations, companies, and firms have been placed under arrest by post-office inspectors for swindling the public by use of the mails. In 46 additional cases individuals have been arrested for conducting similar schemes to defraud. It is estimated that the 80 important cases recently brought to a head represent swindling operations that have filched from the American people in less than a decade fully \$100,000,000." (1)

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(1) Annual Rept. of Post-Office Dept. 1910-pp 12-13.

The 1911 report states, that there had been during the previous year "529 indictments, and in these cases 184 convictions already have been secured, with but 12 acquittals... The swindlers thus convicted had fraudulently obtained from the public many millions of dollars. Reports from the large cities indicate that numerous concerns utilizing the mails have gone out of business as the result of the department's vigorous crusade. The publicity given the prosecutions through the daily press all over the country has been of great value in preventing innocent persons from being defrauded." (1) The activity of the department was continued during the fiscal year following. According to the report of 1912, more than 4,000 cases, involving schemes to defraud were investigated. "These investigations and resulting prosecutions have had the effect of stamping out for the time being, most of the swindling done through the mails. In the last two years over a thousand persons have been arrested by post-office inspectors for such swindling." (2)

In continuation of its policy of prosecuting persons who make illegal use of the mails, instead of merely issuing fraud orders against them, the department,

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- (1) Annual Rept. Post-Office Dept. 1911, p.27
 (2) " " " " 1912, pp 15-16.

according to the report of the Postmaster-General for 1913, investigated, during the fiscal year, 2,879 fraudulent schemes, arrested 510 persons, and convicted (1) 304.

"The increase for the fiscal year 1914 over that of 1913, in the number of convictions on the charge of using the mails in furtherance of schemes to defraud, presents a gratifying illustration of the progress the department has made in the direction of relieving the commercial world and the general public of the baneful influences exerted by these fraudulent enterprises. From the reports submitted by the inspectors covering cases in which arrests were made during the year ending June 30, 1914, it is estimated that the promoters of these fraudulent schemes obtained approximately \$68,000,000.⁽²⁾ The fraud orders were gain used, there being 45 of such issued during the year as against 3 during the preceding year. During the year there were 762 arrests and 370 convictions on the charge of using the mails in furtherance of schemes to defraud.

It is not easy to overestimate the importance and the value to the public of the Postmaster Generals'

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(1) Rept. of Postmaster General 1913, p.95
 (2) " " " " 1914, p.46.

pursuits of swindlers who have been robbing the ignorant by means of the mails. Yet the activity of the United States Government, however, in the prosecution of promoters selling worthless stock is limited. In the first place it has no control over the business unless it is a part of interstate commerce. In the second place it has no control unless the company uses the United States mails to defraud. All of the recent raids are based on the fact that the swindlers forwarded through the mails circulars, letters, and stocks intended to defraud the public. From the number of prosecutions that have resulted, it is evident that much good has resulted from the work of the Post-Office Department. It is probably true that many frauds still go unpunished, but, nevertheless, the activities of these swindling enterprises have become limited. Although handicapped in many respects, the importance of the work of the Postoffice Department must be admitted as an essential agency in the destruction of the business of the fraudulent promoter. Millions of dollars are annually saved to investors by the operations of this department alone. Because of the limited activity of the department, there is, however, need for other governmental agencies to put an end to the sale of worthless securities to the public.

(b) By Supervision of Public Utility Commissions.

Another agency regulating the sale of certain securities in the United States, is the Public Utility

Boards of various states. The spread of regulation of business by administrative commissions is one of the most marked and important recent developments in this country. The policy was first applied by a few of the states to railways. It has now been extended by several states to public utilities of many kinds.

The regulation of utilities by administrative commissions is a very recent development. The movement which began in Wisconsin and New York about 1907, has now spread so that "there are at present forty-eight commissions with independent personal, representing forty-five separate jurisdictions". Only three states, Delaware, Utah, and Wyoming are without such commissions. The states of New York, Massachusetts, and South Carolina each have two commissions.
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In fifteen of the jurisdictions provision is made for the supervision by the Commission over the issue of stocks and bonds of the public utilities. The states empowering their Commissions with such rights are Arizona, California, Kansas, Illinois, Indiana, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Texas, Vermont, and Wisconsin.

The laws vary as regards the powers granted to

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(1) Ann. Amer. Acad. 53:1-18. May '14.

the Commissions. Thus, in some states, as in New York and Wisconsin, the commission has complete control. A thorough investigation and valuation by the commission must be made before security issues are approved. After a certificate has been granted, there is strict supervision of the disposition of the proceeds. Section 55 of the Act Creating the Public Service Commission of New York, indicates the power that is given to the Commissions over security issues in that state: "Any common carrier, railroad corporation or street railroad corporation organized under the laws of the State of New York, may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations, provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof and stating that, in the opinion of the commission, the use of the capital to be secured by the issue of such stock, bonds, notes, or other evidences of indebtedness is reasonably required for the said purpose of the corporation. For the purpose of enabling it to determine whether it should issue such order, the commission shall make such inquiry or investigation, hold such hearings and examine such wit-

nesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination."

Before any company can issue or authorize the sale of any new securities, it must secure authority to do so from the Public Service Commission. This board makes a thorough investigation of the security back of the bonds and stocks, and if it deems it advisable, grants permission to sell the same. By means of its examinations the Commissions not only protect the public against excessive issues of capital by public service corporations, but also protect the investor against unwise capital expenditures. For instance, the method of procedure in cases involving the authorization of new bond issues, has been outlined by the Commission of the (1) Second District of New York as follows:-

"In passing upon the application for leave to issue additional capital stock, the Commission will consider:

"Whether there is reasonable prospect of fair return upon the investment proposed, to the end that securities having apparent worth but actually little or not value may not be issued with our sanction.

"We think that to a reasonable extent the interests of the investing public should be considered by

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(1) Second Annual Report of the Public Service Com. p12)

us in passing upon these applications.

"The Commission should satisfy itself that, in a general way, the venture will be likely to prove commercially feasible, but it should not undertake to reach and announce a definite conclusion that the new construction or improvement actually constitutes a safe or attractive basis for investment. Commercial enterprises depend for their success upon so many conditions which cannot be foreseen or reckoned with in advance, that the duty of the Commission is discharged as to applications of this character when it has satisfied itself that the contemplated purpose is a fair business proposition."

(c) By the "Companies Act" in England.

In England, promotion enterprises are regulated by means of the "Companies Consolidation Act". An epidemic of fraudulent promotion of companies in the decade 1890-1900 caused a public demand for an amendment to the laws in force at that time. Following this agitation, a Department Committee was appointed by the Board of Trade, which reported in 1895. As a result of their investigations an act was passed in 1900, but was found to be inadequate and easily evaded. Another act was passed in 1907, and in the year 1908, the Companies Acts, 1862-1907 were consolidated. As a result, England now has a stringent law respecting the

prospectuses, directors' liability, and floating charges of newly promoted enterprises. ⁽¹⁾ Publicity rather than control of issues of securities is the key note of the English system of regulating new companies.

The prospectus as required by the law provides the investor with information relative to the persons with whom the company in reality dealt, the amount of or estimated amount of preliminary expenses, the contracts entered into, the actual value of intangible and real assets, and the shares, and cash paid for promotion and underwriting services. A copy of every prospectus, properly signed by every person who is named therein as a director, must be filed for registration with the registrar of companies on or before the date of its publication. Where no prospectus is issued, the company cannot allot any of its shares unless before their first allotment there has been filed with the registrar of companies a statement in lieu of the prospectus signed by every person who is named therein as a director or a proposed director of the company. With the information given in the prospectus at hand, the investor should be able to judge as to the adequacy of the proposed capital or the value of shares for which he subscribes.

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(1) See Thomas Mulvey's Report on Company Capitalization Control, pp. IXXX-1XXXXIV)

Perhaps the greatest source of loss in the promotion of companies is the launching of enterprises without adequate capital. The fixing of a minimum subscription in the prospectus is one of the means devised in the Companies Act to prevent this evil. "The promoter appealing to business men must there show a financial statement, including preliminary expenses, cost of plant, machinery, working capital, in complete detail, and he must provide a minimum subscription which will realize sufficient to manage the concern without any doubt as to its being subsequently hampered through want of capital. The fixing of the minimum subscription is a purely business matter: It may be fixed too low, so that it is apparent to the investor that adequate capital to carry on the enterprise will not be produced, or it may be fixed too high, so that there may be difficulty in obtaining sufficient subscriptions to enable business to be commenced. But the safeguard is this, that shares may not be allotted, the business cannot be commenced and the subscriptions must be returned to the subscribers unless the minimum subscription is received within the allotted time." (1)

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(1) T. Mulvey's, Company Capitalization & Control.
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Provision is also made for what is called a statutory meeting. The company may commence business after the minimum subscription has been made and a certificate to do business has been issued but "all the contracts entered into on behalf of the company or by the company are ineffective and merely provisional until they are approved of by the shareholders at a statutory meeting. These provisions in effect place the launching of the company completely in the hands of the shareholders." There is also a provision in the Act whereby the Board of Trade Inspectors may at any time investigate and report on the affairs of the company.

From what has been said, it will be seen that "the promoters are tied in the first place by the prospectus, in the second place by the minimum subscription, and in the third place by the statutory meeting. If there is any defect in the proceedings, or non-compliance with the statute, the shareholders are entitled to the cancellation of their subscriptions for shares and the return of the moneys paid."⁽¹⁾

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(1) T. Mulvey: Company Capitalization and Control, p lxxxiv
 Note:- The text of the Companies Consolidation Act of 1908 may be found as Appendix T pp 488-506 in Thomas Mulvey's Report on Company Capitalization Control.

The Companies Act in England seems to be a very effective means of eliminating the promotion of fraudulent and unsafe enterprises. Its success as a method of control has caused agitation elsewhere for a somewhat similar measure. A Federal Incorporation Act, based upon the principles of the English Companies (Consolidation) act of 1908 has been suggested by able financiers in the United States as the proper and most efficient method of controlling the promotion of newly promoted companies. A discussion of this point will be found in the concluding chapter of this thesis.

(d) The Work of the Central Association of German Banks and Bankers.

The Central Association of German Banks and Bankers is the agency in Germany regulating the trade in unlisted securities and suppressing unsound issues. The regulation of unlisted securities is not the particular subject of any existing legislation and there is no legal protection against fraud further than that afforded by the general commercial and criminal law. The question of the protection of the general public has been left to a private agency, the Central Association of German Banks and Bankers.

Two Committees are maintained by this Association: (1) A permanent committee on the trading of unlisted securities and (2) a permanent committee on the suppression of unsound brokerage firms.

The first committee, among its other activities, "has prepared and published so-called usages, or extra legal regulations, governing the methods of quoting, buying, selling, delivering, and otherwise dealing in unlisted securities, in accordance with which most, if not all, of the legitimate business in such securities is carried on."⁽¹⁾

The second committee was created in 1910. "The Committee decided at the outset that legislation would either be inadequate or would constitute a hindrance to legitimate business. The evil could best be met independently by recourse to the general criminal law and the law of unfair competition and public warnings." The Committee established a central office and began collecting evidence relative to the activities of all brokers whose honesty in business was open to suspicion. Resort to public prosecutions is made by the Central Association only in cases of open swindling. The main reliance has been in the publication of warnings to the people. As to the nature and success of these warnings the Central Association writes the Consulate General as follows: "The public warnings, which are given out by us on the basis of sufficient and reliable information, are sent to a large number of newspapers with the request

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(1) See Report of Consul General A.M. Thackara in the Investment Bankers Association Bulletin, Vol. 1 No.3, pp 12-14.

that they be given publicity in the editorial section. In view of the fact that their publication is a matter of interest to the readers of the papers, they are regularly printed without charge. Our association is aware that in giving out these warnings it makes itself liable in many ways under the civil and criminal law... In none of the many cases in which we have issued warnings during the last two years have the firms involved dared to bring legal complaint against us, but have contented themselves with mere threats about which we have never troubled ourselves. This gratifying success is to be accounted for by the painstaking care which we exercise in the publication of our warnings.... In the short period of two years during which it has been actively at work in this field a great deal is said to have been accomplished and the association expresses the opinion that it is well able to cope with the situation in the future with its existing instrumentalities and without the aid of special legislation." (1)

(a) Through the Means of "Blue Sky" Legislation in the United States.

As has been previously stated, the Post-Office Department in the United States has been one of the

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(1) Report of Consul General A.M. Thackara, in I.B.A. Bulletin, Vol. 1, No. 3, pp.12-14)

agencies actively engaged in suppressing the sale of fraudulent securities through the mails. The Public Utility Commissions also have done much good in preventing swindling operations in the promotion of public utility enterprises. These two agencies, however, have not by any means been sufficient to control adequately, the promotion of fraudulent enterprises. Therefore, in recent years, there has been considerable agitation for the creation of other means in order to control the fake promoter. One result has been the enactment of "Blue Sky" laws. This legislative movement is a most recent development, the first real blue sky law having been passed by Kansas in 1911. Since that time laws with essentially the same principles have been enacted in 27 states and have been considered by the legislatures of several other commonwealths of the Union. The following chapter will treat of the nature and evolution of "Blue Sky" legislation.

Chapter II.

The Evolution of "Blue Sky" Legislation.

1. The Definition and Scope of "Blue Sky" Legislation.

"Blue Sky" is a term which in recent years has come to be applied to all those laws which have for their object the elimination of the business of distributors of fraudulent and otherwise non-meritorious securities. The general intent of the "blue-sky" laws is to prevent the sale of fraudulent or worthless stocks and bonds by providing that a company may not sell shares or commence business until its scheme of operation has been approved by a governmental department or some state official. All prohibit the offering for sale of certain securities in the state unless the person or concern making them conform to certain specific requirements with respect to such offering. Every possible protection is to be given to the average investor against the numerous companies which sell stocks, bonds, or securities of little or no value, especially against the investing concerns which have in reality nothing to sell but "blue-sky" and nothing to return to the investor but a highly ornamental stock certificate. This type of regulative and restrictive legislation is comparatively recent and may be said to be due to a change in the attitude of the public, it having gradually come to be more and more understood that it is to the interests of all classes to have proper safeguards to insure the investor against the sale of worthless securities.

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Kansas is generally accredited with having been the first state to adopt a so called "blue Sky" law. That this is the prevailing opinion is evidenced by statements which may be gathered from various sources. Thus, the former Kansas Bank Commissioner, Mr. J. N. Dolley stated at the time the first Kansas "Blue Sky" law was enacted that "Kansas is the first and only state to have a law of this kind", ⁽¹⁾ and in his first report on the operation of the act dated September 1, 1912, he says "This act, as you know, was something entirely new in the business world." In his retiring address delivered January 13, 1913, Governor Stubbs shared the same opinion, stating that "The blue sky law (referring to the Kansas Act) is the first law of its kind ever enacted." In his report on September 1, 1914, the Attorney General, Mr. Dawson, declares that "Kansas is the pioneer in blue sky legislation" and an editorial in the Wall Street Journal on November 29, 1915, terms the Kansas law the "parent act". From these statements it will be seen that Kansas is usually accredited with having been the pioneer state to place such a law on its statute books. As a matter of fact, however, the assumption that Kansas was the first to pass a "blue Sky" law is in a measure, invalidated by the fact that the legislature of North Carolina in 1899 passed an act essentially of the same nature.

This North Carolina act required that "Before any bond, investment, dividend, guarantee, registry, title guarantee, debenture, or such other like company, (not strictly

(1) Cent. L.J. 221-223, Sept 20, 1912.

an insurance company as defined in this chapter) or co-partnership who shall by agents offer for sale or sell the stocks, bonds, or obligations of any foreign corporation, whether organized to do business in this State, it must be licensed by the Insurance Commissioner, which the Commissioner is authorized to do when he is satisfied that such Company or Corporation is safe and solvent and has complied with the laws of this state applicable to fidelity companies and governing their admission and supervision by the Insurance Department.⁽¹⁾

The Hon. J. R. Young, the Commissioner of Insurance of that State, wrote that "We have had in this state since 1899, Sec. 4805, which has operated practically as a "blue-sky" law, controlling the operation of investment and kindred companies in this state."⁽²⁾

The typical "Blue-sky" legislative movement may, however, be considered to have originated in Kansas. The first Kansas act was passed in 1911 and was a measure drafted by Mr. J. N. Dolley, at that time Bank Commissioner of the State. Before taking up the provisions of this act for discussion it is well that we look into the work done by the Bank Commissioner previous to the enactment of the first Kansas "blue-sky" law.

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- (1) General Stat. 4805 N.C. 1908.
 (2) Letter to S. M. Seaton.

2. A. Preliminary Experiment by the Bank Commissioner before the Enactment of the Kansas Law.

One of the first moves of Mr. Dolley upon entering office was to devise some means of checking the sale of bogus and questionable securities. As was stated in the first chapter, the people of this state had been the victims of a great number of fakirs handling fraudulent securities, who were able to secure many sales by alluring promises of extraordinary profits. With the end in view of destroying the business of the distributors of stocks and bonds of this character, Mr. Dolley established a branch in his office for the purpose of making investigations into the nature of the securities offered generally throughout the state. In order to show the advantages offered to investors by the department he gave the matter as great publicity as possible through the press.

On the ninth of April, 1910, Mr. Dolley sent the following letter to the editors of the leading newspapers of the state:- "As you perhaps know, I have established a department in the Bank Commissioner's office to protect the people of Kansas from fakers with worthless stock to sell. I give you below a small item concerning the matter, which I hope you may be able to use in your paper. I have no funds for advertising purposes, and the only way I can get this information before the people is through the generosity of the Kansas press. Thanking you for whatever you may do in

the premises, I am

Sincerely yours,

(Signed) J. M. Dolley,
Bank Commissioner. " (1)

The "item" to which he refers in his letter to the editors is addressed "To the People of Kansas", and is as follows:- "The State Banking Department has established a bureau for the purpose of giving information as to the financial standing of companies whose stock is offered for sale to the people of Kansas. If you are offered any stock, and want information as to the financial standing of the company offering the same before investing, please write this department, and I will furnish it." (2)

Being convinced of the success of his first endeavors, Mr. Dolley on December 16, 1910, published a second letter to the people of Kansas, in which he stated: "About one year ago the banking department organized a bureau to investigate the sale of stocks, bonds, and other securities in Kansas. We have made much research along these lines, and are amazed at the enormous amount of money the Kansas people are being swindled out of by these fakers and "Blue Sky" merchants. I find that Kansas is literally infested with them. They are sitting around, and when a man dies the widow receives her pittance of insurance,- one, two or three thousand dollars, as the case may be, mostly from fraternal insurance. These thieves show up a few days after the funeral and undertake to sell the widow some of their fake stock (1) Mulvey's Rept. upon Company Capitalization & Control, p1XViii (2) " " " " " " p1XViii-1Xix

promising her dividends of anywhere from fifteen to fifty per cent per annum. They are getting a large amount of money from this source, as well as a great many other sources, and their victims are mostly those who are unacquainted with business methods, but are hard-working, frugal, saving people, and can ill afford to lose the money. I sent the papers an announcement several months ago, which they kindly published warning their subscribers, and I wish to thank them for their kind assistance at that time. I enclose you a blank that I would like to have you print in your valuable paper, so that any one of your subscribers if they wish information along these lines, may clip the same from your paper, fill it out and mail it to this department, and I am sure we can give them some valuable advice and be of much assistance to them in investing their money where it will not be lost." Mr. Dolley requested that neither the blank nor letter were to be published before December 21, 1910. The form of the blank which he wished to be published with the letter is as follows:

(Form 35)

-----, Kansas
 ----- 191--,
 J.N. Dolley, Bank Commissioner, Topeka, Kansas:

Dear Sir:- I have been solicited to invest in the

------(Name-of-concern-or-corporation)-----

------(Street-number-or-building)-----

------(Town-and-State)-----

Remarks:-----

Will you kindly give me any information at your command regarding the same?
 Very Truly Yours,

This preliminary experiment was soon followed by the legislative enactment in 1911 of a law to provide for the regulation and supervision of investment companies, or the first Kansas so-called "blue-sky" law. It was not one of the measures which occupied the center of the legislative stage that year; the daily press gave it but scant notice at the time, and it was a sort of by-product of the legislative session. The act, however, "soon became the most widely known work of the legislature which passed it and it quickly achieved an important place and influence in American legislation,"⁽¹⁾

On February 6, 1911, a bill drafted by Dolley was introduced in the legislature by Mr. Matson as House Bill No. 966. On February 9 the bill was read a third time in the House and was passed with a few amendments by a vote of 63 to 52. The House bill was amended in the Senate on March 7, 1911. The main provision inserted was in section five of the House bill, which was made to provide that "The Bank Commissioner shall issue to such investment company a statement reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the bank commissioner's office for public inspection and information, that such investment

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(1) Statement of S. T. Seaton, Special Assistant to bank Commissioner, W. F. Benson.

company is permitted to do business in this state, and such statement shall also recite in bold type that the bank commissioner in no wise recommends the securities to be offered for sale by such security company." Other minor amendments were made, and on March 7, Mr. Matson moved that the House concur in the Senate amendment to the House bill and the vote stood 75 yea and 35 nay. The bill was approved by Governor Stubbs on March 10, 1911 and was published and thus became effective on March 15, 1911. (1)

a. ACT OF 1911.

The following is a summary of the provisions of the law:

Section 1. provides that the Act shall apply to all dealers in stocks, bonds, or other securities, except State and National Banks, Trust Companies, Real Estate Mortgage Companies, Building and Loan Associations, and Corporations not organized for profit. No company, whether incorporated or unincorporated, shall attempt to sell any securities in Kansas except United States bonds, State of Kansas bonds, or municipal bonds of Kansas, until there shall be filed (as provided in Section 2) in the office of the Bank Commissioner a statement showing in full detail the plan upon which the company proposes to transact business.

Section 2 also provides that in addition there shall be filed a copy of all contracts, bonds or other instruments which the company proposes to make with, or sell, to, its contributors. A statement showing the name and location of the investment company, and an itemized account of its actual financial condition and amount of its property and liabilities is also to be filed. Papers relating to the organization of the Company are required; also, a copy of the state laws in case the

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(1) Note:- Detailed provisions of this Kansas "blue-sky" law are to be found in Appendix II Table I.

company is organized under the laws of another state.

Section 3 provides that all of the papers enumerated in section two shall be verified and certified by proper officers and by public officials in some instances.

Section 4 provides that actions may be commenced against any foreign investment company by the service of process on the Secretary of State of Kansas.

Section 5 makes it the duty of the Bank Commissioner to examine the statements submitted, and if he shall deem it advisable, he shall make or have made a more detailed examination of such investment company's affairs. If he finds the investment company is solvent, that its articles of incorporation or association, its proposed plan of business and proposed contracts provide for a fair, just, and equitable plan for the transaction of business, and in his judgment, promises a fair return on the stocks, bonds, and securities by it offered for sale, the Bank Commissioner shall issue to such investment company a statement reciting that such company has complied with the provisions of the Act; that detailed information in regard to the company and its securities is on file in the Bank Commissioner's office; that such investment company is permitted to do business in the state, and such statement shall also recite in bold type that the Bank Commissioner in no wise recommends the securities to be offered for sale by such security company.

Section 6 provides that it shall not be lawful for any investment company, either as principal or agent, to transact any business until it shall have filed the papers and documents required by the law.

Section 7 provides that no agent shall do any business for an investment company until he shall have registered with the Bank Commissioner. This registration shall entitle the agent to represent the investment company until the first day of March following, unless the authority is sooner revoked by the Bank Commissioner, and such authority shall be subject to revocation by the Bank Commissioner at any time.

Section 8 provides that every investment company shall file at the close of business on December 31st, and June 30th, of each year, a statement, properly verified, setting forth in such form as may be prescribed by the Bank Commissioner, its financial condition and the amount of its assets and liabilities, and furnishing such other information as the Bank Commissioner may require.

Section 9 provides that the general accounts of every investment company shall be kept by double entry, and that such company, its partners or managing officers, shall at least once in each month, make a trial balance of such accounts, which shall be recorded in a book provided for that purpose. Such trial balances and all other books and accounts of such company shall at all times during business hours, except on Sundays and legal holidays, be open to the inspection of stockholders and investors in said company, or of the investors in the stocks, bonds, or other securities by it offered for sale, and the Bank Commissioner and his deputies.

Section 10 provides that the Bank Commissioner shall have general supervision, as provided in the Act, over any and all investment companies, and all such investment companies shall be subject to examination by the Bank Commissioner or his deputies at any time the Bank Commissioner may deem it advisable and in the same manner as now provided for the examination of State Banks.

Section 11 provides that whenever it shall appear to the Bank Commissioner that the assets of any investment company doing business in the state are impaired or that it is conducting its business in an unsafe, inequitable, or unauthorized manner, or is jeopardizing the interest of its stockholders or investors, or whenever the company shall fail or refuse to file any papers required by the Act, without giving satisfactory reasons therefor, the Bank Commissioner shall communicate the facts to the Attorney-General, who shall thereupon apply to the Supreme Court or the District Court where such company is located, or to the judge of either of said courts, for the appointment of a receiver to take charge of and wind up the business of such investment company.

Section 12 provides for penalties for making any false statement or any false entry in any book of the investment company.

Section 13 provides penalties for those who shall attempt to sell stocks, bonds, or other securities without complying with the provisions of the Act.

Section 14 provides for use of fees which are charged against the companies to cover the expense of the examinations, etc.(1)

This act remained the law regulating and supervising investment companies in Kansas, until amended in 1913. Some

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(1) For full text of the law see Appendix II Table 1.

of the provisions of the 1911 act, it seems, were too radical in their effects and hence there arose a demand for changes in a few of the sections. With reference to this law the Committee on Legislation of the Investment Bankers association reported on November 21, 1912, as follows: "The Kansas law is a very curious one and while conceived with a laudable end in view, is so drastic in its terms that dealers in high grade securities are virtually prevented from doing business in Kansas."⁽¹⁾

Mr. Dolley realized the difficulties involved in the original act and became an active advocate of amendment. He saw that "special provision should be made for the investment banker, or any other person, firm, or corporation dealing exclusively in stocks and bonds."⁽²⁾

In an article appearing in Moody's Magazine he states that "the Kansas Legislature when it meets next month will be asked to amend the law so as to provide for a special blanket permit for the investment banker and others dealing exclusively in stocks and bonds, requiring them to file the statements etc. required by law in regard to their own bank or firm, so that the Banking Department may investigate their reputation both as to the class of securities they

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(1) I.B.A. of A. Proceedings, 1912, pp 155-157.

(2) Moody's Magazine, Vol. 15, p 45.

handle and along other lines. When they satisfy the Banking Department that they handle nothing but first class securities, and that their reputations along other lines are found satisfactory, the Bank Commissioner may issue them a permit entitling them to handle such stocks or bonds as they desire by merely filing a list from time to time of such securities as they are handling, doing away with the necessity of investigating each particular issue, but reserving the right to revoke such permit at any time it is found that the banker or company in question is handling questionable securities. With this provision Mr. Dolley goes on to say, "I see no reason why any legitimate investment banker should object to the law. The only delay in the matter would be when the investment banker makes application, then it would be necessary to investigate the applicant thoroughly which would not take long."⁽¹⁾

(b) ACT OF 1913.

When the Kansas legislature met in 1913, two bills were introduced amending the act passed in 1911. One bill was brought before the House on February 5th, 1913 by Mr. W. G. Tullos. This was known as House bill No. 569 and was "An act amending Sections 1, 2, 5, 10, and 13 of chapter 133 of the Session Laws of 1911, and repealing said original sections 1, 2, 5, 10, and 13 of Chapter 133 of the Session laws of 1911" (House Journal 1913). Another bill was in-

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(1) Moody's Magazine Vol. 15, p 45.

troduced in the Senate on February 5th, by Mr. W. M. Price. On being put to a vote on February 21, 1913 this bill, known as bill number 485, was passed by the Senate, there being only one dissenting vote. On the 24th of February the Senate bill was brought before the House, which body proceeded to amend the bill and on March 3, 1913 voted to pass it as amended by a vote of 76 for and 5 against such action. When the bill was returned to the Senate it refused to concur in the House amendments and asked, on March 7, that a conference committee be appointed to adjust the differences. Mr. W.M. Price and James A. Troutman were selected to represent the Senate and Robert Stone, C. F. Armstrong and N. A. Davis were appointed as conferees on the part of the House. This body reported the same day and the House and Senate passed the bill as recommended. The bill of Mr. W. G. Tuloos having been stricken from the calendar on March 3rd, the Senate bill number 485 as amended became the new law, after having been signed by Governor Geo. H. Hodges on March 8, 1913. It became effective after publication on March 10, 1913.

The new law embodied some of the amendments which had previously been recommended by the Bank Commissioner, Mr. J. N. Dolley, and he is accredited with having been the author of the bill. Several changes were made in the old law and the following sections of Chapter 133 of the Session laws of 1911 were repealed, namely, 1, 2, 5, and 10.

Section 1 of the new act was an amendment to the same section of the old law, and defines what is to be known as an "Investment Company" according to the terms of the act. The name as used in this act, says, shall include first, Every person, corporation, company, co-partnership, or association whether incorporated or unincorporated, except state and national banks, trust companies, real estate mortgage companies dealing exclusively in real estate mortgage notes, building and loan associations, and other associations and corporations not organized for profit, which shall offer or negotiate for the sale of, take subscription for, or sell any stocks, bonds, contracts, or other securities of any kind or character- other than bonds of the United States, state or municipal bonds, stock or state or national banks, building and loan associations, or corporations not organized for profit, and notes secured by mortgages on real estate, located in the state of Kansas- to any person or persons in the state of Kansas, secondly; Every person, corporation, company co-partnership, or association who shall issue, sell, offer or negotiate for the sale of any contract for deed, bond, for deed, or other papers by whatever name such investments may be designated, providing that when certain payments are made or certain conditions fulfilled, a deed or title will be delivered to certain parts or parcels of land, providing that such land is not located in the state of Kansas. Thirdly: Every person, company, co-partnership, corporation, or association organized or which may hereafter be organized, doing business as a so-called investment company, loan, benefit, cooperative, home, or guarantee company, not specifically covered by the foregoing provisions, and for the licensing, control and supervision of which there is no law in force, in this state.

Section 2 makes it unlawful for any investment company to offer for sale any stocks, bonds, contracts or other securities, without having first paid a filing fee of twenty-five dollars to the Bank Commissioner and having filed the following papers and statements with the Bank Commissioner, namely, (a) An itemized statement of its actual financial condition, and the amount of its assets and liabilities, (b) A copy of all contracts, stocks and bonds, or other securities which it proposes to make sell or negotiate to sell to its contributors. (c) Sample copies of all literature or advertising matter used or to be used by such investment company in the sale of its securities (d) A copy of its constitution and by-laws or articles of co-partnership or association (e) If it be an incorporated investment company it shall also file a copy of its charter, and if said company be not organized under the laws of the state of Kansas it shall be required to comply with the laws relating to the admission of foreign corporations to do business in the state of Kansas.

Sections 3 and 4 of the new 1913 law are the same as the corresponding sections in the old, but an important change is made in Section 5 of the new law. In the first place it provided that the bank commissioner shall examine the statements and documents of the companies making application and furnish a full and complete statement or report of his investigation to the charter board. Permission is to be given to the company to sell its securities if the charter board finds that such investment company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contracts contain and provide for a fair, just and equitable plan for the transaction of business, and in their judgment promises a fair return on the stocks, bonds, contracts or other securities by it offered for sale. A permit is to be granted to the company by the bank commissioner, reciting that the bank commissioner and charter board in no wise recommend the securities offered for sale. This permit, for sufficient cause is revocable by the bank commissioner with the consent of the charter board. Provision is also made for excusing companies selling bonds, stocks, and other securities from filing each security as provided in section two of the act. A special license is granted to such company to carry on their business, provided the licensee files on the first day of each month a list of the stocks, bonds, and other securities on hand for sale and sold or negotiated for sale by it during the preceding month. Such license may be cancelled at any time the charter board decides that said licensee is not selling or dealing in such securities as are deemed legitimate securities.

In Section 10 a change is made in the amount charged for examinations made by the bank commissioner or his deputies. Thus, under the old law, five dollars a day plus actual traveling and hotel expenses was charged for such examination; but under the new act this sum is changed to fifteen dollars a day plus the traveling and hotel expenses of the individual making the examination. Failure to comply with these demands revokes the right of the company to do business in this state.

From the foregoing summary of the 1913 act it will be seen that three important amendments were made to the old law. In the first place, the act was made to include companies selling land. It was made incumbent upon such companies to show that the land offered for sale is capable of development, and that the improvements advertised by the

companies have actually been made. In the second place, a change was made in the old law whereby now reputable investment brokers were to be licensed by the State, being required merely to make a monthly report of their sales and to declare the stocks, and securities they have for sale.

A third change was made whereby the power to pass upon securities was placed in the hand of the charter board composed of the Secretary of State, the Attorney General and the Banking Commissioner. The latter provision was made to do away with the difficulties which might arise through an arbitrary exercise of power by the Bank Commissioner. (1)

(c) Act of 1915

The amendatory law of 1913 was not entirely satisfactory. It was especially objectionable to investment dealers because its drastic nature interfered unduly with legitimate business enterprises. The "blue-sky" department itself was aware of this fact and furthermore feared that the law might be held unconstitutional. Governor Capper recommended that the "blue-sky" law be strengthened so that there would be no question as to its constitutionality. Meanwhile, Mr. Seaton, the Special Assistant to the Bank Commissioner, was drafting a new bill, "for the purpose", as he said" of securing a law which would conform to the demands of legitimate busi-

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(1) For full text of the law See Appendix II Table 2.

ness and avoid constitutional difficulties." When the legislature met in 1915, Mr. Seaton's bill was introduced in the Senate on January 27, by Senator Price of Greenwood. This bill, known as Senate bill number 431, was "An act to prevent unfairness, imposition or fraud in the sale or disposal of certain 'securities' herein defined by requiring an inspection thereof, providing for such inspection, supervision and regulation of the business of any person, association, partnership, or corporation, engaged or intending to engage, whether as principal or agent, in the sale of any such securities in the state of Kansas, as may be necessary to prevent unfairness, imposition, or fraud in the sale or disposal of said securities and repealing Chapter 133 of the Session laws of 1911, and Chapter 141 of the Session laws of 1913".

Another bill was introduced in the House on February 10, 1915 by Mr. Gibson. This bill was known as House bill number 896 and is said by Mr. Seaton to have been drawn by an attorney representing the Investment Bankers Association.

The Price bill, upon being put to a vote, was passed by the Senate by an unanimous vote. It was then sent to the House and referred to the Judiciary committee. The "Model Bill", or Gibson bill, was referred to a committee and sent back to the House without recommendation. It seems that there was considerable difficulty in getting a meeting of the Judiciary Committee to act upon the Price Bill. For a

time it appeared that it would be pigeon-holed. At this point, March 16, Mr. Stone of Shawnee moved that further consideration of the House bill number 896 be postponed and that Senate bill number 431, as passed by the Senate, be recalled from the Committee, placed on the Calendar and put on third reading and final passage. This was done. After a slight amendment was made (Section 4, making for formal record of compliance), the bill passed by practically an unanimous vote. A dissenting vote was cast by the Chairman of the Judiciary Committee. The bill was again sent to the Senate where the House amendment was immediately concurred in. It was signed by Governor Capper March 23, and went into effect April 1, 1915.

The Kansas "Blue Sky" law of 1915 is in form radically different but is much the same in substance and legal principle as the former law. The first thing of importance in the new act is the limitation of the law to "speculative securities" and "speculative enterprises" as defined in

Section 1 of the law. The term "speculative securities" includes

(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;

(2) All securities for promoting the sale of which a commission of more than five per cent is offered or paid;

(3) All securities into the specified par value of which the element of chance or hazard of speculative profit or possible loss equal or predominate over the elements of reasonable certainty, safety, and investment;

(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;

(5) The securities of any enterprise, association, partnership or corporation which has included or proposes to include in its assets as a material part thereof, patents, formulae, goo-wäll, promotion, or intangible assets or which has issued or proposes to issue a material part of its securities in payment for formulae, patents, good-will, promotion or intangible assets;

(6) Securities made or issued in furtherance or promotion of any enterprise or scheme for the sale of unimproved or undeveloped land on any deferred payments or installment plan, when such lands are not situated in the state of Kansas and the value of such securities materially depends on the future performance of any stipulation by the promoters of such enterprise to furnish irrigation or transportation facilities, or other value enhancing utility or improvement.

Section 2 provides that before any "speculative securities are to be sold in the state the following conditions must have been complied with, namely:

(1) Copy of the securities so to be promoted must be given to the Bank Commissioner.

(2) A statement in detail of assets and liabilities of the company, including the total amount of securities and of any securities prior thereto in interest or lien authorized by the company.

(3) If such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon if any;

(4) A full statement of facts showing the gross and net earnings, actual or estimated, of any person or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien;

(5) All knowledge or information in possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same;

(6) A copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion and no such prospectus or advertising matter shall be used unless the same has been filed hereunder;

(7) The names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the bank commissioner a registration fee of one dollar for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent until and including the first day of March next following;

(8) The name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association;

(9) A statement showing in detail the plan on which the business or enterprise is to be conducted;

(10- The articles of co-partnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a co-partnership or unincorporated association;

(11) A copy of its charter and by-laws if the securities be issued or guaranteed by a corporation;

(12) A filing fee of twenty-five dollars.

Section 3 as in the former acts, provides, that the company file its written consent that actions may be commenced against it in the proper courts of any county in this state in which a cause of action may arise, by the service of process on the secretary of state.

Section 4 provides for investigations and examinations at the promoters expense; for the filing of a complete report of the same to the Charter Board, which Board, may refuse to allow the company to sell its stock, etc, if it finds;

(1) That the makers or guarantors of said securities are insolvent, in failing circumstances, or are untrustworthy;

(2) Or that the promoters plan of business is unfair, inequitable, dishonest, or fraudulent;

(3) Or that the promoters plan of business does not adequately secure investors against the unlawful dissipation or misapplication of the funds of the enterprise or business;

(4) Or that the promoter's literature or advertising is misleading and calculated to deceive purchasers or investors;

(5) Or that the securities offered, or to be offered or issued, or to be issued, in payment for property, patents, formulae, good-will, or promotion and intangible assets in excess of the reasonable value thereof;

(6) Or that the enterprise or business of the promoter is unlawful or against public policy;

(7) Or is a mere scheme for a promoter or promoters to get rich quick at the expense of the purchasers of the aforesaid securities. Such findings shall be in writing and sent to the company and after that it shall be unlawful for them to attempt to promote the sale of any speculative security in this State. The company must be given a hearing if it so desires.

Section 6 provides that in case the promoter is dissatisfied with the findings of the charter Board, he is given a right of appeal to the courts. Pending such appeal these findings are only prime facie evidence against him, but unless the promoter appeals from these findings within thirty days they are to be final.

Section 7 provides that no amendments shall be made to the charter, articles of incorporation, constitution or by-laws of the company without giving notice of the same to the bank commissioner and the actual transactions of business must comply with the plans as stated to and sanctioned by the Bank Commissioner.

Section 8 states that the act does not apply to (a) securities of the United States; or of any foreign government; or of any state or territory; or of any county city, town - ship, district or other public taxing sub-division of any state or territory of the United States or any foreign government (b) Securities of public or quasi-public corporations, the issues of which are regulated by the Public Utilities Commission or board of similar authority of any state or territory of the United States; or securities senior thereto; (c) Securities of state or national banks or trust companies, mortgage companies dealing exclusively in bona fide mortgages or farm and city real estate, or building and loan associations authorized by the Charter Board to do business in this state. (d) securities of any domestic corporation organized without capital stock, for religious, charitable or reformatory purposes.

Section 9 provides that the accounts of the company shall be kept in a business-like and intelligent manner and the same shall be subject to examination by the bank commissioner or his deputies when he deems it advisable. Four financial statements are to be sent to the bank commissioner each year; one December 31st another on March 31st, a third on June 30th, and a fourth on August 31st. A filing fee of \$2.50 must accompany each such statement and the company must comply with these demands within ten days or forfeit its right to do business in the State.

Section 10 provides for special inspection and gives the bank commissioner and his deputies the right to issue subpoenas and in case any person refuses to obey any such subpoena or make answer to any competent and material question propounded to him by the state bank commissioner, shall upon conviction in any court of competent jurisdiction be deemed guilty of a misdemeanor, and fined in any sum not exceeding five hundred dollars or also be imprisoned for not over ninety days.

Section 11 and 12 make provision for penalties in case companies or individuals knowingly make false statements. The fines range from one hundred dollars to five thousand dollars and terms of imprisonment from one to seven years.

Section 13 provides that the act shall not apply to the owner of any speculative security, who is not the maker or issuer thereof, who shall acquire and sell the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this act.

The remaining provisions are not so important; dealing with the use of fees, use of experts from the state institutions to determine the value of lands or mines, etc. Section 17 states that persons and companies holding permits under the repealed statutes shall be deemed to have complied with section 20 of this act/

The real meat of the law is that the bank commissioner may at any time investigate the affairs of concerns selling "speculative securities" in the state and the Charter Board may at any time give notice and hear evidence and make findings against any company when evidence justifies.

The operation and effects of this law will be considered in the concluding chapter. (1)

3. "Blue Sky" Legislation in Other States.

The passage of the first "blue-sky" law in Kansas was soon followed by similar legislation in other states. A "blue-sky" law applying to mining and oil companies was enacted the same year (1911) in Connecticut. Though they acted adversely or adjourned without action, the legislatures of several other states- among them Ohio, Indiana, Oregon, Maine, and Nebraska- had measures essentially the same as the Kansas law under consideration. In Massachusetts and Illinois similar bills were introduced but failed in committee, and there was considerable agitation in the state of Washington for the passage of such a law. The demand for such legislation was certain to spread. State

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(1) For full text of the law, see Appendix II Table 3.

after state had passed public utility commission acts, and "blue-sky" laws were destined to follow a similar course. The "blue-sky" legislative movement is but one evidence of a quickened public conscience which is finding expression in progressive legislation along various lines. The extensive campaign of advertising conducted by Mr. Dolley, heralding the success of the Kansas law, probably had considerable effect in causing such legislation to be considered in other commonwealths. The name, the notoriety of it and the 'wave of reform' sweeping over the country, led to the advocacy of such measures during the years 1912 and 1913 in a large number of states. Indeed, the legislatures of almost forty-states considered such measures. Four states-Arizona, Louisiana, South Carolina and Vermont-passed "blue sky" laws in 1912 and twenty-one other states placed "blue-sky" laws on their statute books in 1913. These twenty-one were Arkansas, California, Florida, Georgia, Idaho, Iowa, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Texas, West Virginia and Wisconsin. Such measures failed of enactment in Illinois, Massachusetts, New York, Pennsylvania and several other states and "blue-sky" bills were vetoed in Colorado and Indiana. The original Kansas act, we have seen, was also amended by the legislature.

In The year 1915 new or amended "blue-sky" measures

were enacted in the states of Arkansas, Iowa, Kansas, Louisiana, Michigan, North Dakota, Ohio, Oregon, South Dakota, South Carolina, West Virginia and Wisconsin. The amendments were intended largely to avoid tedious litigations and to comply with the needs of legitimate business concerns.

At the present time (May 1, 1916) twenty-seven states have enacted "blue-sky" laws. The list is as follows: Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wisconsin. Thus, "blue-sky" legislation is making great headway, and, unless checked by the courts or found undesirable in practice seems destined to become general in the United States.

Comparison of Statutes.

A comparison of the "blue-sky" statutes in the various states shows a very general similarity. We cannot examine the detailed provisions of all the various acts, but may classify them into four main types.⁽¹⁾ There are, in the first place, the "blue-sky" laws based upon the Kansas statutes; in the second place, laws such as in Connecticut and Minnesota which are very limited in their scope; in the

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(1) An Analysis of the various laws, giving detailed provisions is to be found in Appendix I.

third place those based upon the "Model Bill" proposed by the American Investment Bankers Association, and finally, the laws which are modeled upon the "Fellows Attorney General Bill".

In this chapter the detailed provisions of the Kansas "blue-sky" statutes were given, mainly because they have served as models for similar legislation in most of the other states. A study of the various laws will reveal the fact that at least fourteen states based their "blue-sky" laws upon the original Kansas law of 1911. Seven of these- Arizona, Arkansas (1912), Idaho, North Dakota, Tennessee, Vermont and West Virginia- have had laws almost identical both in matter and phraseology with the Kansas law of that year. Thus, in all of these states, as was outlined in detail for Kansas, all concerns selling securities and all securities not specifically exempted, come within the purview of the law. The excepted concerns in each case are such institutions as banks and trust companies, real estate mortgage companies, building and loan associations, and corporations not organized for profit. The excepted securities are bonds of the United States, bonds of the State and municipalities and real estate mortgages. It is made unlawful to sell securities coming within the provisions of the law without a permit otherwise than by registered agents. Certain provisions must be complied with in securing a permit, such as giving the details of

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the business concerned. The administrative official is given broad discretionary powers. He may at time have the books audited and examinations made of the property against which the securities are being issued. If, in his judgment, the company is not solvent or does not hold forth the prospect of a fair return upon the securities offered for sale, he may without the necessary permit.

Six other States- Florida, Nebraska, Ohio, South Dakota (1913-, Texas and Wisconsin (1913), based their "blue-sky" laws upon the Kansas law of 1913, thus making a total of twenty commonwealths which have enacted laws essentially similar to the Kansas "blue-sky" statutes of 1911 and 1913.

As was pointed out in detail in this chapter, Kansas in 1915 adopted a "blue-sky" law which in general construction was different from any existing measure. This statute was copied almost verbatim by North Dakota. It is not necessary to give the provision of these acts, as the provisions of the Kansas law have already been enumerated. These laws were drafted with the view that it is not the province of the State to control or attempt to control ordinary business risk or to limit the right to engage in legitimate speculation, and their provisions are confined to what are termed 'speculative securities'.

As against the Kansas inclusive type of "blue-sky" legislation two states have measures applying to only one kind of corporation, and hence come in a separate class.

One of these states, namely Connecticut, has a law which applies only to mining and oil companies and does not apply to any corporation all of whose mines, plant, or property are situated within the state. The other state, Minnesota, has a "blue sky" statute which applies only to companies organized to transact the business of insurance.

A third type of "blue sky" legislation is based upon the "Model Bill" proposed by the American Investment Bankers Association in 1913. Although this bill has not been so generally accepted as the Kansas type of law, nevertheless it has undoubtedly had a modifying influence upon the more drastic measures proposed to the legislatures of the various states. Its fundamental principles have been enacted into law in Georgia, Maine and Louisiana. These laws, in contrast with the drastic, paternal Kansas type, provide that there shall be supervision, where control is not exercised by a utility commission, in so far as private securities are concerned- or where securities are not being sold to a corporation's own shareholders. Thus, the Georgia law for example provides, that institutions dealing in securities are to file with a state official, the names and addresses etc., of all the officers of the company. Non-resident dealers must also file a power of attorney appointing a resident agent upon whom process may be served on behalf of the dealer. Whenever a dealer offers securities in the state, the Secretary of State may require him to file a statement showing the securities offered or he may

such order to the securities of any particular class, and may at any time order a dealer to furnish financial statements to show that the offer is honest and in good faith. If the statements are not filed, the dealer forfeits his right to transact business in the state. However, appeal to the courts is then allowed. The Louisiana statute is similar to the Georgia law in most respects, but contains a further provision, that the dealer in addition to filing statements must furnish bond. Moreover, the law provides that any purchaser has a right of action on the bond and can recover if he loses by misrepresentation of the agent.

As a fourth and final type of "blue-sky" legislation we have laws based upon the "Fellows Attorney General Bill." This bill was adopted in Michigan in 1915, and, with slight amendments, in Arkansas and South Dakota the same year. The Bill, which was drafted by Attorney-General Fellows of Michigan, Attorney-General Cosson of Iowa, and Attorney-General Moose of Alabama, is in its most essential provisions very similar to the Kansas Statutes on this subject. The Michigan law has several sections which have been copied verbatim from the Kansas law of 1911. The administration of the law is placed in the hands of a commission of three rather than one individual, but the same broad powers are granted. The securities exempted are the same as those exempted in the Kansas law (1911) except that exemption is made of securities listed in any standard manual of infor-

mation approved by the Commission. Practically the same information has to be filed, and the provision in the Michigan law requiring that the papers be verified by the oath of an officer or member of the company is practically the same as in the Kansas statute. The commission is granted power to examine the affairs of a company at its discretion and may withhold a license if in its opinion, the company has issued securities for property, patents, good-will, promotion, and intangible assets in excess of the value as found by the examination, or if the sale of such securities would work a fraud upon the purchasers. It is an improvement on the Kansas (1911) type of law, however, in that it does not assert the authority to prevent, by executive mandate, the sale of securities not promising a fair return or involving a probability of loss. Objection is made to the Michigan law mainly on the ground that it asserts as did the Kansas law of 1911, a power of executive control, or prohibition, over the business of the investment dealer. That this type is also considered to be drastic in its effects and operation is evidenced by the fact that two of the statutes in Michigan and South Dakota- have recently been declared unconstitutional by Federal District Courts. It is not likely that other states will adopt measures of this type. There is a distinct tendency towards the adoption of less drastic measures, which will prevent fraud but will not interfere unduly with legitimate business transactions.

It is probable that such measures as the recently enacted Kansas and North Dakota laws, confining the operation of the statute to 'speculative securities', and the bill proposed by the American Investment Bankers Association will serve as models for future "blue-sky" enactments.

Chapter III.Court Decisions Pertaining to "Blue Sky" Legislation.

There has been what might be called a general attack upon "blue-sky" legislation throughout the United States, on the ground of unconstitutionality. The courts in Kansas, Florida and Arkansas have upheld the "blue-sky" laws enacted by these states. In five states- Michigan, West Virginia, Iowa, South Dakota and Ohio, on the other hand, the courts have declared such laws unconstitutional. No act has yet been passed upon by the Supreme Court of the United States. A brief analysis of the holdings of the courts in each state where "blue-sky" laws have been contested, follows.

1. The Michigan "Blue Sky" Laws Held Unconstitutional.

In Michigan several suits were commenced in the Federal court, and one suit in the state court to test the validity of the "blue-sky" law enacted in 1913. The latter court upheld the law, but the Federal court declared the law unconstitutional. In the Federal court one suit was brought on behalf of the Alabama and New Orleans Transportation Company, a business corporation desiring to sell its own securities in the state, and four other suits were

brought by leading banking houses. These five suits were consolidated and heard as one. (1)

The objections urged against the act by the plaintiffs were as follows:-

(1) That it deprived them of their property in violation of the Fourteenth Amendment of the Constitution of the United States.

(2) That it deprived them of the equal protection of the laws in violation of the same amendment.

(3) That it directly burdened interstate commerce.

(4) That it delegated to the Securities Commission legislative and judicial power in violation of the Michigan constitution.

(5) That the title of the act was not confined to one object and did not express that object, as required by the Michigan constitution.

The opinion of the court was written by circuit judge Denison and district judges Sessions and Tuttle upon the application of the plaintiffs for an injunction to restrain the enforcement of the law. It was held in the first place that the act could not be sustained as a tax law or a mere license law. The court decided that corporate, partnership and individual securities, and obligations to pay money, are property, and the right to issue and sell, or buy and sell the same, is liberty, within the due process clause of the Federal Constitution. It maintained that the law in so far as it authorized the Michigan Securities Commission to prohibit a sale of securi-

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(1) Alabama and New Orleans Transportation Co., Continental and Commercial Trust and Savings Bank, N. W. Halsey & Co., H. L. Higginson et al., A. B. Leach et al., vs. Edward H. Doyle, John W. Haarer, and Grant Fellows, Members of the Michigan Securities Commission. 211 U.S. 173.

ties in case it should find that the sale in all probability would result in loss to the purchasers, etc. regardless of whether the securities were based on sufficient property to be probably good, was not a proper exercise of the police power to conserve the public welfare, and was therefore unconstitutional as a deprivation of property or liberty without due process of law. The court held that the "blue sky" law was a direct interference with interstate commerce in stocks, bonds, and commercial paper, which constitute a part of interstate trade, and was therefore invalid. The court concluded that the unconstitutional provisions of the act affected the entire scheme of the act so that no part of it could be sustained. The law was held to be too all-embracing as is shown by the following statements of the court: "We take judicial notice of the common understanding that this "Blue Sky Law" was intended, as is said by the Attorney General "to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations. If just this intent had been carried into effect by the act as passed, these cases would not be here; but scrutiny of the law discloses additional and very different effects. It is not confined to corporations, but covers partnerships issuing, and individuals dealing in, securities; it does not relate alone to stocks, but as well to bonds, mortgages and promis-

sory notes; it is not limited to investment companies, as that term would ordinarily be defined, but extends the definition so that it may include most of the private corporations and partnerships in the United States; it does not cover fraudulent securities merely, but reaches and prohibits the sale of securities that are honest, valid and safe; it does not simply protect the unwary citizen against fraudulent misleading, but it prevents the experienced investor from deliberately assisting an enterprise which he thinks gives sufficient promise of gain to off-set the risk of loss, or which, from motives of pride, sympathy or charity he is willing to aid notwithstanding a probability that his investment will prove unprofitable."⁽¹⁾

No appeal was taken from this decision of the court, but the Legislature of 1915 passed a substitute "blue sky" law. This law was soon contested and likewise declared unconstitutional by the United States District Court. Suit was brought by N. W. Halsey & Co., Continental & Commercial Trust & Savings Bank and Weis Fibre Container Corporation against Frank W. Merrick, Bank Commissioner, John W. Hearer, Treasurer, and Grant Fellows, Attorney General, composing the Michigan Securities Commission. The same three judges who held the 1913 "blue sky" law invalid, declared the 1915 law to be unconstitutional. In their opinion they state,

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(1) Alabama & New Orleans Transportation Co. vs. Doyle,
211 U.S.173.

"it is not important to go over the same ground as before. Our conclusions then announced have been more or less completely approved. The only question now open is whether the difference between the laws of 1913 and 1915 justify any different result as to the latter. We think not, because we find no substantial change in those respects which were held to be fatal. Some minor details have been corrected, but the new law, like the old, impresses upon interstate commerce a burden which is direct and which is beyond the limits of the police power.... The fees to be paid, the delays imposed, and the large, often very large expense involved in furnishing information and conducting examinations amount to a practical prohibition of all small dealings, and they emphasize the directness and extent of the restrictions placed on all interstate commerce in these securities. Several serious objections to the validity of the law are urged in addition to those passed upon in our former opinion; but it is unnecessary to consider them. The preliminary injunction prayed for should issue."⁽¹⁾

The Iowa "Blue Sky" Law (1913) held Unconstitutional.

The first "blue sky" law of Iowa, enacted in 1913, was declared unconstitutional on February 11, 1914, in the

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(1) I.B.A. Bulletin, Vol. 4 No. 5, pp.55-59.

District Court of the State of Iowa. In this case of L. S. Harper vs. W. S. Allen, secretary of the State, the court held the "blue-sky" law to be unconstitutional for the following reasons:-

(1) "That the act in question, Chapter 173 of the Acts of the 35 General Assembly, is in violation of the 14th amendment of the Constitution of the United States in that it takes from the owner of property the right to sell and dispose of the same, and from the individual copartnership or corporation the right and liability to engage in the business of buying and selling stocks, bonds, and other securities without due process of law.

(2) "That the act in question grants privileges and immunities to citizens of Iowa which are denied to citizens of other states in direct violation of the terms of the Federal Constitution which provides, "The citizens of one state shall be entitled to all the privileges and immunities of citizens of every other state."

(3) "That the act in question delegates legislative and judicial power to the Secretary of State to determine the right of individuals, copartnerships and corporations, both resident and non-resident, to engage in business within this state leaving to the determination of the Secretary of State the right to prohibit business which in his judgment is unjust and inequitable and which is not in his opinion a safe investment for the purchaser, thus violating the provisions of the Constitution of the State of Iowa." (1)

The state court held that the Iowa "blue-sky" law and all its parts was unconstitutional and void, and of no force and effect.

A few months later the Iowa law was passed upon by a U. S. court also. On September 5, 1913 a bill of com-

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(1) I. B. A. of A. Bulletin, Vol. II, No. 7, pp 5-6.

plaint against W. S. Allen, Secretary of the State, and George Cosson, Attorney General, was filed in the District Court of the United States of the Southern District of Iowa, by William R. Compton Company, a Missouri Corporation; Breed, Elliot and Harrison, an Indiana corporation, and McCoy and Company, a Maine corporation, to test the validity of the Iowa "blue-sky" law. These companies, as explained in the bill of complaint, were engaged in the business of buying and selling stocks, bonds, and other securities, the stock representing the capital stock issued by corporations and bonds representing the debts of corporations, co-partnerships and associations and other like bodies corporate, both private and municipal. The plaintiffs contended that the "blue-sky" law should be held invalid for the following reasons:

(1) It was not validly enacted, and was not passed by the legislature of the State of Iowa as provided by Sections 15, 16, and 17 of Article 3 of the Constitution of the State of Iowa.

(2) It was unconstitutional because in violation of Section 29 of Article 3 of the Constitution of the State, for while the title of the law embraced but one subject the law covered more than one subject.

(3) It was in violation of Section 8 of Article 1 of the Constitution of the United States and of the 14th Amendment of the Constitution of the United States, in that it imposed a burden upon interstate commerce.

(4) It was in violation of the 14th amendment of the Constitution of the United States since by its restrictions and regulations it deprived persons of their property without due process of law and denied them equal protection of the law and freedom of contract.

(5) It was in violation of Section 9 of Article 1 of the Constitution of the State of Iowa in that the

restrictions and conditions prescribed in the Act were not within the police or other powers of the State of Iowa to impose.

(6) It was unconstitutional in that the powers and duties conferred upon the Secretary of State constituted a delegation of legislative authority to the Secretary of State in that it conferred upon the Secretary of the State, judicial authority.

(7) It was unconstitutional in that it denied to persons the right to a judicial investigation by due process of law of the facts as to whether or not their stocks, bonds, and securities proposed to be purchased or offered for sale were safe and legitimate investments.

(8) It was in violation of Section 9 of Article 1 of the Constitution of the State and of the 14th Amendment of the Constitution of the United States, in that the act provided that the defendant, Secretary of State, his clerks and deputies could examine the business of persons engaged in the sale of securities and require them to divulge all facts in connection with their business, whether or not the same related in any way to the securities proposed to be sold.

(9) It was unconstitutional in that it subjected persons to excessive fines, cruel and unusual punishments, in violation of Section 17 of Article 1 of the Constitution of the State of Iowa.

In rendering an opinion in this case (July 6, 1914) the United States District Court held that stocks, bonds, and securities are subjects of interstate commerce, and shipments and sales of the same between the states are interstate commerce. It held that the Iowa "blue-sky" law was unconstitutional and invalid as imposing a direct burden upon and denying privileges to citizens of other states which are not imposed upon, and which are granted to, citizens of Iowa. The text of the opinion follows in part:

"Can it be a state in this Union, under our Constitution, possesses the power to punish the doing of such

customary, every-day transactions unless the conditions, exactions, regulations, and restrictions imposed by this law be first met and performed? That the act in express terms and by inclusive definitions employed therein does so ordain cannot be gainsaid or denied.... That the transportation of such articles of personal property from one state to another for the purpose of barter, sale, and delivery constitutes not only commerce among the states of this country, but a very large and important element of such commerce in the magnitude of business transacted and the amounts of money involved, is selfevident.... That the Act in question, in prescribing the only terms and conditions on which complainants and interveners, citizens of foreign states, may transact the business of disposing of their property within the borders of this state, does impose a burden on interstate commerce needs no comment further than a reading of the act itself, for, by the law, it is placed within the power of officers of the state to absolutely prohibit such business transactions.....

"It must be held the scope of such inspection laws is not without its limitations as applied to the nature of the person, article, or thing designed by the law to be inspected and the manner and method of the inspection to be employed....

"It must be held the subjects of interstate commerce therein sought to be regulated and controlled are not

only burdened by the act, but are directly burdened thereby, and that such articles are not the subject of state inspection laws.....

"The mere reading of the act in question makes entirely clear the contention of complainants and interveners that it does impose burdens upon and denies privileges to citizens of other states which are not imposed upon and which are granted to citizens of Iowa. That such favoritism of the law of a state to its citizen subjects as this act grants cannot be successfully defended, no matter how laudable the purpose sought to be accomplished thereby may be thought to be, would appear settled by numerous authoritative decisions."⁽¹⁾

The West Virginia "Blue Sky" Law (1913) Held Unconstitutional

In the case of Bracey v. Darst, the statute of West-Virginia, known as the "blue-sky" law (1913), was declared unconstitutional by the United States District Court for the Northern District of West Virginia. Smith H. Bracey conveyed to the Howie Mining Company, an Arizona Corporation, certain property in consideration of the issue to him of all the stock of the corporation. Bracey then sold some of this stock to other individuals. He and these purchasers having subsequently offered this stock for sale in Ohio County, they

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(1) Compton v. Allen, 216 Fed. 537-549.

were prosecuted for violation of the "blue-sky" law. Thereupon suit was brought by Bracey and the other individuals above named, and the Howie Mining Company, to enjoin the Auditor and the Attorney General and the Prosecuting Attorney, of Ohio County, from proceeding with the prosecutions upon the ground that the "blue-sky" act was unconstitutional for these reasons:-

(1) Because it deprived the individual plaintiffs of their right to sell in the State of West Virginia valuable stocks, bonds, and securities, which deprived them of their property without due process of law.

(2) Because it denied these plaintiffs the equal protection of the law.

(3) Because it imposed a burden amounting to prohibition upon interstate commerce, and,

(4) Because it attempted to vest in and delegate to the Auditor of the state, legislative, executive, and judicial powers in violation of Section 1 of Article 4 of the constitution of West-Virginia, which provides: "The Legislative, Executive and Judicial Departments shall be separate, and distinct, so that neither shall exercise the power properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time."

Judge Dayton and Judge Fritchard first held that the definition of Investment Companies contained in section 1 of the Act embraced both a single individual-- that is, a natural person-- and one or more such individuals associated together, as well as corporations; that the power of the legislature to regulate the business of corporations and that of individuals is vastly different, based upon the fact that individuals under Article 4, Section 2, of the Federal Constitution, are "citizens" of the State "entitled

to all 'privileges and immunities of citizens of the several states," while corporations are not.

Judge Dayton said further: "It is now substantially admitted that if its (the acts) intent is to prevent a citizen from selling his own notes or other obligations, or bonds, securities, etc., which he may have acquired in the course of business without a certificate from the Auditor of solvency and 'sound business capacity', it is clearly subversive of the inalienable right he has to acquire and sell property, and its validity cannot be asserted."

The majority called attention to the fact that the purpose of the suit was to enjoin the state officials from prosecuting individuals for an alleged violation of the act consisting of their effort to sell stock acquired by them in the due course of business and owned by them as individual citizens. The majority accordingly held that the act both in terms, and by the interpretation given it by the state officials charged with its execution, included individuals.

The second proposition or premise of the majority opinion was that the stocks, bonds, and other securities affected by the act were subjects of interstate commerce. The greater part of the opinion consisted of the discussion of these two propositions. The conclusion of the majority is thus stated in the final paragraph: "It follows that we must reject the contention that this act can be inter-

preted to affect only corporations and not individuals. On the contrary, we are driven to the conclusion that it distinctly seeks to abridge and deny the rights of citizens of the United States to buy and sell property in the state, thus depriving them of their property without the due process of law; that it denies them the equal protection of the laws, and that it imposes a restraint and burden on interstate commerce contrary to the provisions of the Constitution of the United States. We do not deem it necessary to extend further discussion in support of this conclusion. The opinions of the Iowa and the Michigan cases are so clear, sound and convincing as to not only command our admiration, but lead us to the conclusion that nothing more complete and effective can be added to them."

The fourth objection to the act urged by the plaintiffs, that it delegates to the Auditor, legislative and judicial powers, as well as executive power, was not passed upon or discussed.

Judge Woods took issue with the majority both in his premises and conclusion. He says: "In the first place, it seems quite clear that the statute is limited in its application to corporations and to individuals acting in concert by organization,- that is, by making a whole of interdependent parts, and was not intended to apply to a single individual conducting his own business." Referring to the language of Section 1, defining investment companies as those which sell or negotiate for the sale of any stocks, bonds,

debentures, or other securities, he says: "It is vital to consider that this language cannot be construed to fetter a corporation or partnership or other association of individuals engaged in other business by forbidding it to sell a security acquired in the regular course of such other business; on the contrary, by its meaning appearing from the context it limits the organization or combinations to which it applies to those which sell or negotiate securities as to the whole of a constituent part of their business either as a temporary measure or as a permanent enterprise."

The conclusion of Judge Wood's on this point was that the statute did not put any undue restraint on personal liberty; and that the case on this point came within the scope of the police power of the state. Regarding interference with interstate commerce he held that the statute only indirectly affected interstate commerce in the correction of an evil upon which Congress had not legislated; and that the statute did not put any undue restraint on personal liberty. Answering the contention that it denied the plaintiffs equal protection of the laws, Judge Woods said that they had no ground for complaint, that though the statutes exempted banks and certain other companies, the classification was not arbitrary, and was within the power of the legislature. In view of the decision in the case of Mfgs. Light & Heat Co., et al., v. Public Service Commission of West-Virginia, by the same court, he maintained that it was unnecessary to discuss the contention that the statute con-

conferred legislative and judicial power on the Auditor.

The conclusion of Judge Woods, therefore, was that the act should be held constitutional, and the injunction refused. The dissenting opinion concluded with this statement: "If the plaintiffs do not fall within the terms of the statute the fact may be proved in their defense to the indictment, but it is not available in an action to enjoin the enforcement of the statute as a nullity."⁽¹⁾ The vital point ruled and decided by the dissenting opinion was that the act did not apply to the sales of their stock made by the individual plaintiffs, for which they were indicted.

The South Dakota "Blue Sky" Law (1915) Declared Unconstitutional.

Federal Judges Sanborn of Minnesota, Munger of Nebraska and Elliott of South Dakota on November 18, 1915 heard arguments on a case involving the constitutionality of the Blue Sky law of South Dakota and on the following day filed an opinion holding that it was unconstitutional. The validity of the South Dakota law was contested by the Sioux Falls Stock Yards Company, William Morley & Harry Morley in a suit filed against the State Securities Commission. The decision of the District court of the United States, for the District of South Dakota, Southern Division was as

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(1) Bracey vs. Darst, 218 Fed. 482.

follows: "On this 18th day of November 1915, the case above entitled came on for hearing upon the order to show cause why an interlocutory injunction herein should not issue.... And now, after consideration of the pleadings and the arguments, because in the opinion of the court Chapter 275 of the Session laws of the State of South Dakota for the year 1915, is violative of the constitution of the United States and this opinion is confirmed by the decisions in Alabama and New Orleans Transportation Company vs. Doyle, 210 Fed. 173, Wm. R. Compton Company vs. Allen et al, 216 Fed. 573, and Bracey vs. Darst, 218 Fed. 482. It is hereby ordered, that the defendants... are hereby enjoined from instituting and prosecuting any actions, civil or criminal, against the complainants under the aforesaid act of the Legislature of the State of South Dakota, for the alleged violations thereof, and from taking any proceedings for the enforcement of said act, against the complainants, except such proceedings as may be deemed proper by them in the criminal actions already pending against the complainants.... And this injunction shall continue until the final decision of this case or the further order of the court." ⁽¹⁾ It is expected that the state will appeal the case to the United States Supreme Court.

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The Ohio "Blue Sky" Law (1915) Declared Unconstitutional.

Ohio was the fifth state in which a "blue-sky" law was declared unconstitutional by the courts. In November, 1915, suits of the Geiger-Jones Company, Canton, Ohio, investment brokers, and Don C. Coultrap, Pennsylvania agent of the Geiger-Jones Company, to restrain Attorney-General E. C. Turner and Superintendent of Banks Henry T. Hall from proceedings looking to revocation of the Geiger-Jones Company's license under the so-called "blue-sky" act, were filed in the United States District Court, Columbus, Ohio. During the following month, another suit seeking injunctions, was brought before the District court by William R. Rose and the Richard Auto Manufacturing Company. These cases were heard by the Federal District Judges, and on February 10, 1916, they announced their decision holding the Ohio "blue-sky" law invalid.

In each of the three above named cases the constitutionality of the Ohio "blue-sky" law was assailed by the complainants, and the Court petitioned to grant a temporary injunction restraining the state officials from attempting to enforce the provisions of the act against the complainants. The chief grounds cited by the complainants in support of their contention that the law is unconstitutional were:

- (1) That it is violative of the commerce clause of

the Federal Constitution.

(2) That it is constitutionally obnoxious in that it denies complainants of property without due process of law and the equal protection of laws.

(3) That it delegates legislative and judicial power to an executive officer, in violation of the Constitution of the State of Ohio.

(4) That it is a law of general nature but does not operate uniformly throughout the state, as required by Section 26, Article 2 of the State Constitution.

The Court held that the "blue-sky" law of Ohio was unconstitutional on three grounds: (1) That it violates the commerce clause of the constitution, (2) That it violates the due process clause of the constitution, in that it interferes with the right of contract, (3) That it violates the provisions of the constitution which guarantee the equal protection of the law.

The Court also inferentially decided in favor of the Geiger-Jones Company and the other complainants in the contentions that the law makes improper classification of parties in violation of the constitution, and that it confers judicial power. This latter contention is not absolutely decided and is touched upon only casually.

The text of the opinion, as written by United States District Judge Slater, follows in part:

"The constitutionality of the so-called "blue-sky" law of Ohio is assailed in each of the above-mentioned cases, which, for convenience, are considered together.

"Statutes of a kindred character have in learned opinions been declared invalid by Federal Courts sitting in Michigan, Iowa, West Virginia, and South Dakota.... Although a consideration of the act will involve reiteration

of principles already ably and convincingly stated, it is thought advisable to review it in part, at least...

"The act prohibits, under severe penalties, the disposition of all securities subject to its provisions, without discrimination as to and regardless of their value, unless authority so to do is first obtained from the Superintendent of Banks (termed the Commissioner)

"The inclusive character of the act extends not only to 'securities' coming within its provisions, but also to the persons subject to its exactions, prohibitions and penalties, as is evidenced by its definition of the terms 'dealer' and 'company', the former embracing ' any person or company' and the latter ' any corporation, co-partnership or association, incorporated or unincorporated, whenever and wherever organized. ' "

The Court then holds that the statute must be upheld unless clearly unconstitutional, but if it be so, then it is unimportant how wise, necessary or beneficent it may be; that it must all be declared void; that a stock certificate is possessed of inherent value; that a state law which directly burdens interstate commerce cannot stand, and that stocks and bonds are articles of interstate commerce.

The Court then enters upon a discussion of the law in comparison with other "blue-sky" laws.

"The draughtsman of the Ohio act here in question, unwittingly, no doubt, but with strange fatality, incorporated into it substantially all of the vices of the statutes considered in the above named cases, and added others equally, if not more, obnoxious. The burdens which it imposes on interstate commerce are so direct, positive and substantial as to... vitiate the entire act for the reason that its constitutionally offensive features are so distributed through its various parts as to be inseparable... In the present act the prohibition from the transaction of business must extend for a week, and possibly 20 or 30 days, or more; it therefore offends against the constitution quite as much as the first of the Michigan acts.

"The act must be further tested by its affect upon the citizen's right to pursue a lawful calling. The natural

right to life, liberty and the pursuit of happiness is not an absolute right. It must yield whenever the concession is demanded by the public welfare, health or prosperity. But, however viewed, the act transcends the legitimate exercise of the police power and violates the due process clause of the constitution....

"If an issuer or owner of or dealers in securities issued in good faith and based on value fairly commensurate with their face or selling value is deprived of the right of disposal he is deprived not only of his property, within the meaning of the constitution by taking from him one of the incidents of ownership, but also of his liberty.

"Legitimate commercial transactions, such as the disposal of securities of the kind above mentioned, cannot be regulated by legislative enactment. The act in question seeks to regulate private transactions, but the person, natural or artificial, that sells securities based upon reasonable value, is entitled to the protection of the same safeguards as the man who sells clothing, dry goods, groceries or hardware, or engages in any other private business that is not affected by a public interest.

"The uncontrolled discretion, and even the whim and caprices (if he gives them play) of the Commissioner or of his assistant (subject to the Commissioner's Supervision) may not only halt, but injure and perhaps destroy a worthy business enterprise and cast a cloud on the name of the applicant or licensee, and when such applicant or licensee seeks redress in the Courts he must assume the burden of disproving the findings made against him, however, groundless they may be.

"In given respects the above named law is more severe than that of any of the states whose 'blue-sky' laws have been held unconstitutional."

The law was held to extend arbitrary powers and fails to give equal protection to persons brought under the influences of the statute. This was illustrated in the following manner: "If more than 50 per cent of the bonds of a given issue by a corporation are included in a sale to one purchaser, such issue is not embraced within the act. The

residue, of the bonds, whether worthless or of value, may be sold without the supervision which the law provides. Another corporation of similar or precisely the same character, having no single purchaser for a majority of its bonds, is subjected to the onerous provisions of the law, withough its securities may be of the highest financial character."

It was maintained by the Court that the act goes too far and imposes undue burdens upon corporations. The opinion stated: "Again, the power to supervise and regulate the business here involved was never before and cannot now be understood to signify authority so to burden the business of domestic corporations as ~~an~~ practical effect to destroy it, regardless of its actual character and merit. We are not to be understood by anything ^{is} said in this opinion to intimate that it is not within the power of the state Legislature reasonably to regulate the business of corporations of its own creation or that of foreign corporations and joint stock companies which are operating within the borders of the state, such power of regulation being more extensive as to such artificial entities than as to individuals, corporations and voluntary associations. We do mean, however, to say, as we have already in effect stated, that the things attempted to be done by the present statute cannot be sanctioned under the guise of 'supervisory and regulatory' measures in respect of the business of issuing and selling stocks and securities, whether of domestic or foreign cor-

porations.

"Other features of the act and other points argued have been considered; the treatment of the one and the discussion of the other would prolong this lengthy opinion and not necessary." (1)

The Kansas "Blue Sky" Law (1913) Upheld.

There have been three district court decisions in Kansas sustaining the "Blue Sky" law (1913), but no authoritative decision from a court of last resort. One Don A. Moun Day brought suit in 1914, against the Bank Commissioner, Mr. Dolley, and the Attorney-general, Mr. Dawson, in the Shawnee county district court, to enjoin them from meddling with his business by the enforcement of the "Blue Sky" law. He was engaged in a land selling project in New Mexico. The district court refused an injunction, and he did not appeal. About the same time, Mr. Dawson brought suit in the name of the state of Kansas against Don A. Moun Day and L. B. W. Moun Day, and two corporations, one organized under the laws of Oklahoma, the other under the laws of New Mexico, to oust them from doing business in Kansas. The corporate names were originally the same -- The American Sugar Manufacturing and Refining Company. The name of the New Mexico Corporation has been changed to The Consolidated Sugar Company. The plain-

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(1) Geiger-Jones Company, Don D. Coultrap, & William R. Rose and the Richard Auto Mfg. Co., vs. Edward C. Turner, Henry T. Hall, et al.

tiff, Mr. Dawson, alleged in substance that neither corporation had authority to do business in Kansas, but that through the Moun Days each had operated here, receiving payment from a large number of persons on purported sales of real estate and rights connected therewith, for which no substantial equivalent was returned. He asked that the defendants be ousted from the exercise of corporate functions, and that a receiver be appointed to take charge of the business and its proceeds. The Supreme court held that in the original jurisdiction a quo warranto suit was not well adapted to the investigation of questions of fraud and the adjustment of the rights of the contributors to Mr. Moun Day's land selling projects, and suggested that the case be taken to a court of general jurisdiction. Acting on their suggestion, Attorney-General Dawson filed a similar suit in the district court of Shawnee county, and then dismissed the case in the Supreme court. The State prevailed in the district court, and a receiver was appointed. Mr. Dawson also caused the arrest and prosecution of one of Moun Day's agents in the district court of Atchinson County, and that court upheld the statute.

We are now in a position to state the decision rendered by the District Court of Shawnee County, Kansas, in

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 (1) The Supreme court case is reported under the title of the State, ex rel, v. Moun Day et al, 90 Kansas 449. See also, the Attorney-General's Report, Sept. 1, 1914.

upholding the Kansas "Blue Sky" law of 1913. The constitutionality of the statute was attacked on the following grounds by the attorneys for the American Sugar Manufacturing and Refining Company:

(1) That the law authorized the taking of private property for public use without just compensation.

(2) That the law deprived the plaintiff, a citizen of the United States, and all others similarly situated or interested, of his property without due process of law, and denied him the equal protection of the law.

(3) That it conferred judicial power upon an administrative officer.

(4) That it violated the provisions of the constitution that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states."

(5) That the bill contained more than one subject and was not clearly expressed in the title.

(6) That it violated the bill of rights by imposing cruel and unusual punishment.

(7) That it violated the state constitution which provides that all the laws of a general nature shall have uniform operation throughout the state.

The decision in this case was rendered by Judge Geo. H. Whitcomb and Judge A. W. Dans, of the first and second divisions of the District Court of Shawnee County.

The "Blue Sky" law was upheld in every particular.

Judge Whitcomb, delivering the opinion of the Court, said in part:

"Regarding the exercise of police power, the right of the state in that respect is the right to exercise the functions of Government, provided it is not limited as stated in some of the state authorities cited.

"As I read it, the principal purpose of the law is to regulate and supervise the dealing in securities by investment companies. I think it is very clear that the state has the power to regulate matters of that kind to protect its citizens against imposition and to place the matter of the administration of the law in the hands of some officer to be designated-- in this state, the Bank Commissioner and Charter Board.

"It is well known to everyone that in some cases during the last few years there are people- some of them might be found within the limits of this court room- that have been led to invest their money in various schemes brought to their attention by agents and brokers, perhaps in good faith, and a very large per cent of the investments that have been made in that way in some cases at least, have been very unfortunate. I might refer to mining investments in which the percentage of return, omitting all consideration of interest and dividends and limiting it to the return of a portion of the principal, has been very small indeed. With a good many investments of that character, people have felt well satisfied if they received anything in return ultimately on the principal.

"During the last few years, another class of investments-- and this term is principally used in this connection-- has been the land contracts-- investments in land purchased on time. There has been a large amount of this sort of business done in this state to the knowledge of everyone. It is not to be thought that the people who have been engaged in that business have all been dishonest or anything of that sort. No doubt a pretty large percentage of them have acted in good faith, but the nature of the investment was a very uncertain one.

"This leaves one other matter, and that is the question of the title. The courts have held frequently that it is a discretionary matter of the legislature as to the particular form of the title. A title isn't necessarily bad because it is broader than the body of the Act, provided

the Act contains but one subject and that is expressed in the title. So in examining this title, we shall have to adopt the rule that has been established, and that is, it will have to be given liberal construction. This objection that is made to the title is referred to by the Supreme court I think by Justice Johnston-- as "the frequently used and well-worn objection, ' It has, of course, been often made, but apparently in recent years without every much success."

In discussing whether the word "Company" as used in the law could be applied to single individuals, Judge Whitcomb said: "Individuals may be included within the meaning of the term. If this were a statute placing a tax upon a telephone company, could it reasonably be said that it wouldn't include individuals operating such public utilities? The word "Company", as used in the statute under consideration, includes individuals as well as corporations."⁽¹⁾

The Florida "Blue Sky" Law Upheld.

In a case decided July 8, 1914, the Supreme Court of Florida held the Florida "Blue Sky" law constitutional and valid. The Florida law applies only to corporations and contains the provision "that nothing in this act shall extend to any seller of stock, bond, or other security who has purchased the same in good faith for value, and who is

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(1) Moodys Magazine, Vol. 16, p.120.

the bona fide owner of such stock, bond or other security at the time of such sale." The Court held in this act "contemplates an adequate hearing, and does not deprive a local corporation of its property rights without due process of law, nor does it arbitrarily discriminate against a local corporation so as to deny to it the equal protection of the law,"⁽¹⁾

The Arkansas "Blue Sky" Law Upheld.

In the case of The Standard Home Company vs. John M. Davis, Bank Commissioner of Arkansas, the plaintiff sought to enjoin the enforcement of what is known as the "Blue Sky" law of the State of Arkansas, enacted by the General Assembly of 1913, upon the ground of its unconstitutionality. The plaintiff was an investment company, organized under the laws of the State of Delaware, and was engaged in the business of writing and selling investment home purchasing contracts and in lending money on real estate collateral in the State of Arkansas and other States of the Union. The constitutionality of the law was attacked on numerous grounds. A brief statement of the arguments of the plaintiff, with the holding of the court on each point follows.

(1) The law was first attacked on the ground that

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(1) Ex parte Taylor, 66 S292.

it was in violation of the Fourteenth Amendment of the Constitution of the United States, because it denied complainant the equal protection of the law (a) in that the act was applicable to state banks and trust companies, but not to national banks; (b) that it applied to stocks, bonds, and other securities, but was not applicable to the bonds of the United States, nor to any municipal bonds of the State of Arkansas, etc. The court held that "the fact that national banks are excluded from the provisions of the act does not affect its validity for two reasons: (1) National banks being creatures of the national government, are not subject to control or regulations concerning the management of their business by the States. (2) The fact that some reasonable exceptions are made does not make the act unconstitutional.... The same rule applies to the objection that while the act applies to stocks, bonds, and other securities, it is not applicable to the bonds of the United States, nor to municipal bonds of the State of Arkansas.

(2) The act was attacked as being in violation of Section 8, of Article 1, of the Constitution of the United States, because it imposed a burden upon interstate commerce. The court pointed out that the plaintiff was not engaged in commerce as it offered nothing for sale, but was purely an investment company, and that loans of money made to investors for the purpose of enabling them to acquire homes was not commerce within the meaning of the commerce clause of

the Constitution.

(3) That the act was violative of the Fourteenth Amendment to the Constitution of the United States because it deprived plaintiff of its property without due process of law, and denied it the freedom of contract guaranteed by the Constitution. The information required to be filed with the Bank Commissioner was asserted to be "unreasonable". The court in answer to this said: "The court is unable to find anything in the questions which applicants for permission to do business in the State are required to answer which are inquisitorial to the extent of making them so unreasonable that the courts should set aside a statute solemnly enacted by the legislative department of the State." Freedom of contract was held to be "not an absolute, but a qualified right, free from arbitrary restraint, but subject to reasonable regulations." The requirement of the Bank Commissioner of a statement of the receipts and expenditures of the company, and a list of officers of the company, with their holdings of stocks and bonds of the corporation, was held to be a "proper and wholesome" regulation.

(4) Complaint was made of the law because it placed restrictions on the plaintiff's right to do business in the State which were not placed upon domestic corporations, and was said by the plaintiff to be in violation of Section 11, of Article XII, of the Constitution of the State of Arkansas. The court quoted Section 6, of the same Article, which pro-

vides that: "The General Assembly shall have the power to alter, revoke, or annul any charter or incorporation now existing and revocable at the adoption of this constitution, or that may hereafter be created, whenever in their opinion it may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the corporators." The court then said that "when a corporation accepts a charter in a State whose constitution or general statutes contain such a provision, that provision becomes as much a part of the charter as if it were incorporated in it, and therefore, authorizes the State to make any changes it sees proper, provided they do not amount to a confiscation of property or an impairment of the obligations of contracts."

(5) The law was also attacked on the ground that the powers and duties conferred upon the Bank Commissioner amounted to a delegation of legislative power to him. To this the court replied as follows: "that there is nothing in the Constitution of the United States which prohibits a State from conferring upon a commission such powers as are conferred by this act, has been frequently decided by the Supreme Court of the United States." It was maintained that the claim of the plaintiff that the Bank Commissioner was vested with arbitrary power could not be sustained, for Section 6 of the act provided that "whenever a right of any investment company to do business in this State is refused or

revoked, as set out in this section, said company may, within twenty days after notification, institute a suit in the chancery court of any county in the State where its principal office is maintained or its principal agent resides, asking that said refusal or revocation be annulled.... If it be determined that the refusal or revocation was wrongful the company shall be reinstated, and the costs shall be paid in the same manner and out of the same fund as the cost of maintaining the department." There was therefore, ample provision for preventing the Bank Commissioner from acting arbitrarily or unlawfully.

(6) The plaintiffs maintained that the act was violative of Section 9, Article 2, of the Constitution of the State of Arkansas, because it subjected violators of the provisions of the act to excessive fines and cruel and unusual punishment. The court maintained that "the punishment imposed by the act is not so excessive as to warrant a court in deciding it cruel, or even unusual."

Judge D. J. Trieher summed up his position in the following words: "The States alone can provide for the prevention and punishment of all who commit frauds, although the mails are not used for their accomplishment, and enact laws to prevent the commission of these crimes. Legislation to prevent crime is of greater benefit to society than the punishment of the offender after the crime has been com-

mited and innocent persons have been made to suffer. Statutes enacted for such purposes ought not to be declared invalid by the courts upon slight grounds, even if cases can be imagined where they may work an injustice." (1)

C. Summary Statement.

From the preceding analysis of the court decisions pertaining to "blue-sky" legislation, it is evident that there is a great difference of opinion in regard to the constitutionality of such measures. It seems impossible to harmonize the several opinions. Five United States District Courts-- in Michigan, Iowa, West Virginia, South Dakota, and Ohio-- have declared "blue-wky" laws unconstitutional while quite similar laws have been sustained by three other courts. The acts have been attacked mainly on the ground that they are violative of the fourteenth amendment to the Constitution of the United States. In every instance in which an unfavorable decision has been rendered by the courts, "blue-sky" laws have been condemned on the ground that they deprive individuals of property without due process of law, and that they deny the freedom of contract guaranteed by the Federal Constitution.

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(1) In the United States District Court for the Western Division of the Eastern District of Arkansas. Filed October 15, 1914. The Standard Home Company vs. John M. Davis, Bank Commissioner of the State of Arkansas, et al. No. 1819.

Moreover, it has been the unanimous opinion of courts rendering adverse decisions that such laws are a direct interference with interstate commerce and hence violate the commerce clause of the Constitution of the United States. Again, in three states-- Iowa, West Virginia, and South Dakota-- the courts held that these laws violated the provisions of the Constitution that "the citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states." The courts in these cases also condemned the laws on the ground that they conferred legislative and judicial powers upon the administrative officers. The Michigan and Ohio courts held that such measures were too sweeping and drastic in their effects. It is mainly for these reasons that the "blue-sky" laws of five states have been held unconstitutional. On the other hand, a United States District Court in Arkansas, and the State Courts of Florida and Kansas have declared that the "blue-sky" laws of these states do not violate these or any other provisions of the Federal or State constitutions. No such law, as stated before, has as yet been passed upon by the Supreme Court of the United States, but two states, South Dakota and Ohio, have appealed cases to this body, and within a few months a decision relating to "blue-sky" legislation should be handed down by it.

Chapter IV.The Attitude of the American Investment Bankers Association
and others Toward "Blue Sky" Legislation.1. The Attitude of the American Investment
BANKERS ASSOCIATION .

The American Investment Bankers Association is in sympathy with the aim of the so-called "blue-sky" laws and perhaps no group of men is more interested in seeing laws placed on the statute books of the several states for the purpose of eliminating fake promoters. The Association has, however, strenuously opposed the adoption of such laws as have been ^{en}acted in most of the states. In fact, not one of the "blue-sky" laws now in force is considered entirely satisfactory as means of adequately and justly regulating the sale of stocks, bonds, and other securities. The Association's position is very well stated in the Report of its Legislative Committee submitted October 28, 1913 as follows:

"The Committee is in sympathy with any fair and practical statute which will prevent the distribution of wild-cat securities and which will protect investors against fraud, but is opposed to the crude paternalistic measures adopted in many states. The Association has strongly protested against the enactment of such laws, the enforcement of which it has considered, would practically destroy the legitimate business of responsible investment bankers..... There is no doubt that much good has been accomplished by some of the regulatory laws, but in this country we have the dangerous habit of going to extremes and if we proceed much farther with our policy of restricting business and with limiting the free employment of capital our progress is surely going to slow up under the strain." (1)

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(1) I.B.A. of A. Proceedings 1913- pp 53-56.

One of the purposes of the Association, as stated upon its organization in 1912, was "to protect against loss by crime or through irresponsible dealers in investment securities, and to surround the offerings of its members with greater safeguards." (1) With this end in view, the Association early intended to co-operate with the public press and state and federal officials for the elimination of all questionable promotions by irresponsible parties. According to Mr. Geo. B. Caldwell, the President of the Association, it "had hardly got into the harness to work out an effective policy, before the country was deluged with literature advocating the so-called Kansas "Blue-Sky" law." This type of law was strenuously opposed by the investment bankers, for it was said to be so drastic in its terms that dealers in high grade securities were virtually prevented from doing business in this state. "It makes no difference," said Warren S. Hayden, "how carefully a blue-sky law is drawn, or how well informed the draughtsman may be with respect to the investment business and business in general, he is bound, if his work becomes enacted into a law, to place a limitation upon the business of the investment bankers. . . . Our danger is not that we would be embarrassed by the operation of well conceived "blue-sky" legislation, but rather that the legislation may be brought forward by those who have no familiarity with the financial mechanism of the country, or with the investment business in particular, and that as a result of careless

work, however well intended, we might find ourselves obliged to modify our business."⁽¹⁾ It is mainly because of the limitations placed upon investment bankers and others by the Kansas Law of 1911, that they so strenuously opposed laws of that type. Seeing, however, that such legislation was impending in other states, and that the Kansas statute might serve as a model in the other states, Mr. Hayden, warned the Association to bestir itself in time to influence the moulding of the laws in the other commonwealths. In his address delivered before the Convention of the Investment Bankers in 1912, he goes on to say: "We are much more likely to be effective by affirmative action than we are by negative action. It is always an awkward thing to be on the defensive, trying to tear down what someone has painfully built up, particularly if those building it up are working with good intentions.... We ought, it seems to me, to formulate our own ideas so that we can offer an affirmative program to those who are seeking to accomplish what really is an entirely praiseworthy object. So I hope that this association, through its legislative committee, will have this whole subject carefully studied and cause to be drafted a typical "blue-sky" statute.... Then when, in any part of the country, projects of this kind are proposed it will be easily possible for those of our members who are residents of the localities concerned, to bring forward

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(1)Address of Warren S. Hayden in the Proceedings of I.B.A. of A. 1912, p 139.

a program, which certainly will be gratefully received-- not necessarily followed-- but which cannot fail to have a modifying effect, upon whatever is done." ⁽¹⁾ This recommendation was put in the form of a resolution and the drafting of a "Model Bill" (by the legislative committee) soon followed. The general plan of the proposed act, provided for the registration of dealers, upon an investigation of their business character and repute and of the securities in which they dealt.

The original Kansas type of "blue-sky" law and the "Model Bill" proposed by the American Investment Bankers Association differ considerably in theory. The Kansas type declared that with exceptions such as government bonds and stocks of going utility concerns, all other securities sold within the state must be approved by the state authorities; that they should show a probable return upon the investment, and the decision of the commissioner was final. The "Model Bill" on the other hand, recognizes that investments are risks taken by the individuals and proceeds upon the theory that no attempt should be made by the state to guarantee them or to pass upon the question of "reasonable profit or return". The business of regulation must be largely informational and a license to do business ought not to be required. An appeal from the action of the commission to an

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(1) Proceedings of I.B.A. of A. 1912, pp 139-148.

administrative board or to the courts was also to be provided for.

The "Model Bill" itself has never been adopted in any state, but it has in some instances had an important effect upon legislation in certain states, as for instance, Maine, Louisiana, and Georgia. Because of this fact, it might be desirable to set forth the provisions of this "Model Bill" in condensed form. The main features of the bill have been summarized as follows:-

1. Provision that all banking houses or institutions dealing in securities shall file with the Superintendent of Banks the names and addresses of all partners or officers.

2. A statement from two officers of savings-banks national banks, state banks, or trust companies testifying to the good repute of the banker.

3. Designation, by a non-resident house, of some attorney within the state for legal service.

4. Authority by the superintendent of banks to require, if need be, a statement from bankers describing in detail the character of any security offered.

5. Authority of superintendent of banks (subject to review of the courts) to order a banker not to sell or offer any questionable security.

6. Exempting State and public securities, commercial paper, running not more than nine months, and stocks and bonds issued by certain established corporations." (1)

The Investment Bankers Association in 1914, prepared a proposed new form of "blue-sky" act, and succeeded in obtaining the co-operation of the National Association of State Bank Supervisors. At the National Convention of

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(1) New York Evening Post. Note:- Full text of I.B.A. "Model Bill", in Moodys Magazine, Vol. 15, pp 224-226.

the National Association of State Bank Supervisors held at Atlantic City, on July 7, 1914, Mr. Robert R. Reed, of counsel for the Investment Bankers Association, was invited to discuss "blue-sky" legislation, of which Eugene Lamb Richards of New York was designated as Chairman. Several suggestions were made by him for amending the Investment Bankers Bill. The proposed law, as prepared by the counsel of the Investment Bankers Association, with the additions suggested by Mr. Richards, has now been given the endorsement of both associations. This proposed Act is intended to bear heavily on so-called "get-rich-quick" concerns. It is based, primarily, on a penal prohibition against fraud and misrepresentation. It requires the filing with a State official of detailed information as to all speculative offerings. Among its various provisions, it requires notification to be given to this official of all offerings, and gives him power to subject any offering to the provisions of the law relative to speculative securities. All securities sold to yield over 10% per annum, or with the representation that they will double in value, are declared to be speculative, and are subjected absolutely to the requirements of the Act. No power is vested in the state official to prohibit the sale of any security, but if he finds that the promotion involves a violation of the law he is required to notify the promoter and also the district attorney of the county in which he is doing business, and the

then promoter is required to advise the district attorney of any further steps taken by him in the promotion of the security.⁽¹⁾

The American Investment Bankers Association has been very active in contesting the constitutionality of some of the "blue-sky" laws. The Annual Report of the Counsel for 1913 states that following the enactment of the "blue-sky" laws in the several states, our opinions were requested upon the constitutionality of the laws adopted in Iowa and Michigan. This involved, of course, the examination of the decision of the United States Supreme Court, the Federal Courts and the courts of the various states on similar legislation. It also involved the difficult task of construing the two acts in question. The opinion rendered in each case was to the effect that the law in question was unconstitutional."⁽²⁾

The Association spared no expense in employing legal talent to contest the constitutionality of the laws in the two states named.⁽³⁾

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(1) Full provisions of this proposed Model Blue Sky law found in Appendix III.

(2) Proceedings of I.B.A. of A. 1913 pp.164-167.

(3) The disbursements in connection with the litigation for the year ending August 31, 1914, totaled \$22,429.41. The larger part of this expenditure went to the local counsel retained for the suits before the Federal and State Courts in Michigan and Iowa. Speaking of the results accomplished, the report of the committee on legislation says: "The cost of contesting the Michigan and Iowa laws was heavy, but the net result has been that investment bankers, without running much risk of being fined or imprisoned, are able to carry on their business in all the various states which, with a rather reckless disregard of vested rights, passed "blue-sky" laws more or less closely modeled on the original Kansas Act." I.B.A. of A. proceedings 1914 pp 66-67.

As a result of their activity the enforcement of these laws were enjoined and the opinions of the courts sustained the position of the American Investment Bankers Association on practically every question involved.

The question of the constitutionality of "blue-sky" laws is discussed in an opinion of the general counsel on the rights of dealers to transact business in "blue-sky" states by mail and telephone. With regard to the constitutionality of these statutes as affecting interstate transactions, the opinion states: "The controlling question however, on this subject, is as to the constitutionality of these statutes as affecting interstate transactions, whether such transactions be effected in the manner stated, or by agents sent into the state to effect sales. No act of interstate commerce otherwise lawful, and no interstate traffic in lawful articles of commerce, can be prohibited by state law. A dealer, incorporated or private, cannot be subjected to restrictions as a condition of the right to sell, even by agents." After quoting authorities the opinion concludes.

"If these decisions are correct, there can, we think, be no question of the fact that the present "blue-sky" laws are unconstitutional, at least as affecting exclusively interstate transactions, whether affected by interstate offerings made by mail, telegram, or telephone, or by agents traveling in the state. If these decisions are incorrect, and assuming that it should finally be held by the Federal Supreme Court that stocks, bonds or other securities are not articles of interstate commerce, dealings by mail would not seem to be on a different footing from other transactions, interstate or intrastate... While none of these decisions would apply conclusively to dealings in securities, we are inclined to the view that a statute regulating such dealings and imposing reasonable restrictions, such as

a notification to the state of all offerings made in the state, and imposing an inspection fee for this purpose, might be held to be constitutional. As far as we have examined the particular statutes of different states, it is our impression that none of them would come within the protection of this principle. As an instance of a possible statute coming within this principle we would cite the so-called Bank Supervisors' proposed model "blue-sky" Act, which simply requires notification to the state of offerings made in the state, and also provides for the registration of dealers having places of business in the state and of agents coming into the state, with a reasonable tax on such dealers and agents." (1)

As was previously stated, the American Investment Bankers Association was very much opposed to the first Kansas "Blue-Sky" law, which it called "a crazy-quilt cure-all, impossible of operation." The new Kansas law (1918) is attacked almost as severely by this same body. The General Counsel speaking of the Kansas "Blue Sky" laws says:

"In substance and legal principle (the new Kansas law) is much the same, or worse, notably in the assumption of power to prohibit the sale of securities of any enterprise which the Charter Board finds to be "against public policy". Counsel then proceeds to make the following comments on the different sections of the Kansas "Blue Sky" law of 1915.

"The thing of first importance is the limitation of the act to speculative securities as defined in Section 1. The application of this definition, and of each of its six parts, to a particular offering, must, under Section 2, be determined, in the first instance by the promoter at his peril. Its final determination, possibly after a loss in the security, will be determined by a jury for the purposes of Section 12, imposing a fine and imprisonment upon the promoter. I would not take the risk of advising any dealer to assume that any security, not expressly exempted under Section 8, is not a speculative security under Section 1. In other words, the only safe course for a lawyer to advise

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(1) I.B.A. Bulletin, Vol. 3, No. 12, pp19-23.

is to comply with Sections 2 to 9, or cease doing business in the state. Practically the same advice would have to be given with respect to the possible exemption of a dealer under Section 13, at least in the absence of an authoritative decision interpreting this Section quite liberally. It is too vaguely phrased, and the question of its application to the particular case can only be determined by a jury, possibly after a loss on securities suffered by investors.... It is also to be noted that Section 13 would not protect a dealer selling on commission or under a joint account agreement except as to the securities owned in good faith by himself. Neither under Section 1 nor Section 13 would the opinion of the bank commissioner or charter board in a particular case furnish any legal protection against Section 12. The result seems to be that for most practical purposes the act, if constitutional, applies to all new offerings, not excepted by Section 8. Section 2 speaks for itself and would, I take it, be considered reasonable if confined to speculative securities, correctly or plainly defined, and if the information was required to be filed for the purpose simply of safeguarding the public by an investigation to discover and prosecute fraud. Section 3, is, I think, unconstitutional, particularly as applied to incorporated dealers not having a place of business in the state. The first part of Section 4, presents the familiar feature of possibly prolonged and expensive investigation at the expense of the promoter or dealer, and would, of course, be prohibitive in many cases. The placing of this expense of the dealer is, I am inclined to believe, unconstitutional. The rest of Section 4 seems to me quite clearly within the condemnation of the Michigan, Iowa and West Virginia federal trade decisions. It asserts a prohibitive power over the offering, based on the findings of the Charter Board. Even if confined to fraud, it would seem to violate the constitutional rights of the citizen, by making the findings of the executive prohibitive. As drawn, it prohibits the sale of securities, the lawful property of the dealer, because, for instance, a guarantor is declared "insolvent", in failing circumstances, or untrustworthy, "or the "plan of business is declared "unfair" or "inequitable" or not to "adequately secure investors" against dishonesty in those managing the business, or the securities are declared issued or to be issued for property in excess of its value, or the enterprise is found "against public policy", or a get-rich-quick scheme. The vague rhetorical character of these provisions practically puts the whole business enterprise in the control of the executive. I think there can be no question but that these provisions, which seem to be the key to the whole statute, are unconstitutional. In this connection, however, I should say that a definite opinion relative to the constitutionality of the act has not been requested of us, and we are not rendering a final opinion upon it. Under Section 5, the regulative powers of Section

4 are continued beyond the preliminary examination, so that the executive may at any time make an investigation and cancel the right to sell within the state. Section 6 is intended to give a power of court review over the decisions of the Charter Board. The language used is most remarkable. The court is authorized to set aside the findings of the Charter Board on the ground that they are "unjust or unreasonable". Having given to the Charter Board powers more or less judicial, the act then gives to the court powers apparently administrative. Section 7, read in connection with Section 2, seems to be intended to have the effect of preventing the amendment of the constitution or by-laws of a foreign association or corporation whose securities are sold by a third person in the State of Kansas. This, of course, is completely unworkable. Section 9 is subject to the same criticism, as it is based on the view that the sale of securities of a corporation in a state subjects the corporation itself to the regulative power of the state. Section 10 seems to be taken very largely from Section 4 of the so-called Bank Supervisors' Bill. It gives general power of investigation, and, read in connection with Sections 1 and 2 and the latter part of Section 16, might have the effect of establishing the essence of the Bank Supervisors' Bill in Kansas, assuming that the other provisions of the new law should be declared unconstitutional." (1)

A later report of the general counsel, has the following comment on eight of the new "Blue Sky" laws passed in 1915:-

"All of these eight new laws, in Michigan, Arkansas, South Dakota, Iowa, Kansas, North Dakota, Oregon, and West Virginia, except the so called Attorney Generals' law, contain features adapted from our original proposal, but they all have other features dangerous to the investment business, and assert the general power of regulation and prohibition which is, we believe unconstitutional. They all have provisions which might, if constitutional, prove very drastic in the event any securities sold without technical compliance with almost impossible conditions, should decline in value, provisions which could be used for blackmailing purposes and by local attorneys to harass and punish the dealer who had sold such securities. This is also true of the blue sky laws still in operation in many other states." (2)

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(1) I.B.A. Bulletin, June 12, 1915.

(2) Report of the General Counsel, I.B.A. Vol. 13, No. 11
pp 8-10

A sufficient number of quotations from the Proceedings of the American Investment Bankers Association have been given to indicate that the Association is in entire sympathy with the motives which lie behind the enactment of "Blue Sky" laws, namely, the suppression of the irresponsible promoter and the dealer in spurious securities. Its opposition has been directed against the impracticable, oppressive statutes, the enforcement of which would, in its opinion, virtually prevent legitimate dealers from doing business. Mr. George B. Caldwell sums up the attitude of the Investment Bankers toward "Blue Sky" legislation in these words: "We want everything that the public wants, that looks to sane progress. Investments cannot be made too safe for the investment banker. We want to see a proper degree of supervision imposed on the creation of investment securities. We want safety and, if possible, uniformity in our state corporation laws. We want reasonable, and if possible, uniform regulation of public utilities. We favor reasonable supervision of "investment companies" very strictly so called, that is, companies making a business of retaining the money of the public which they solicit for investment or dealing in land or securities pledged to secure bonds or notes representing the moneys received. We recognize that this is a quasi-banking business. In our own business we want laws to prevent fraud in the purchase or sale of securities, laws requiring registration of dealers, publicity of offerings, with full

powers of investigation and prosecution and effective penalties against even an attempt to defraud. Against the get-rich-quick dealers, we want restrictions almost to the point of prohibitions upon the public offerings of securities promising extravagant returns. Such offerings should not only be investigated, but prohibited unless accompanied by the fullest disclosure of facts, and possibly by a statement that they are offered as a speculative security, not as a safe investment." (1)

2. Report of a Special Committee in Minnesota.

A special committee was appointed in Minnesota in 1914, to investigate and report on legislation needed to provide further regulation of the organization and management of corporations and sale of securities. The members of this committee were Royal H. Stone, chairman, E.D. Morgan, H. Oldenburg, J. E. Haycroft, and L. B. Byard. The committee gave full consideration to the Kansas "Blue Sky" law (1913) and after detailed criticism concluded that legislation of the Kansas type was not only unconstitutional, but generally unwise in plan, impractical in operation, and injurious in its results. The members of this committee heartily approved of a statement given in 1913 by the committee on Jurisprudence and Law Reform to the effect that "We do not hesitate to declare the belief that many of these acts go to dan-

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(1) Geo. B. Caldwell in Moody's Magazine, Vol. 17, pp 263-264.

gerous extreme of paternalism and furnish a machinery of control which in bad hands might lead to arbitrary and oppressive action, only less objectionable than the abuses at which the legislation is aimed. We are convinced that Statutes for the correction of these abuses should be framed on much more restricted and conservative lines than those which have hitherto been adopted."

The Special Committee argues against the Kansas and Michigan "blue-sky" laws in the following manner:-

"It must not be forgotten that 'corporate, partnership, and individual securities and obligations to pay money are property, and the right to issue and sell or buy the same is liberty, within the due process clause of the federal constitution'. Any unreasonable restraint of that liberty is an attempted exercise of the States Police Power, aside from being most undesirable, would be held void. The vice of the present blue sky laws is that they infringe upon this liberty, and therefore, when ultimately tested in the courts, will probably share the fate of the Michigan law, which was held unconstitutional in the case above referred to.

"These statutes are long and complex to a degree that makes their practical application difficult. The most serious objections, however, go to the method of their administration.... The mere setting out of the administrative provisions contained in these "blue sky" laws is sufficient to indicate their effect. In the first place, the delay and difficulty with which the transaction of ordinary business is involved, becomes serious. It is a general criticism of this kind of legislation that it has been so drawn as to contain numerous provisions, the remedial value of which is obtained at too great a cost to the convenience and freedom of business, and that a different system of regulation might be established which would be equally efficacious in preventing fraud, and at the same time leave untrammelled the transaction of business in general.

"Some bonding houses have on their list 200 issues of securities. A great many have fifty. Some have as many as half a dozen new issues each day. Where there is any volume of business, it is impossible to administer such a

law with any degree of fairness. The expense and labor involved make it prohibitive. To require the filing of voluminous reports and documents which cannot be examined, is useless, and, to say the least, a great mistake.

"There is also to be considered the increased cost of doing business which these laws entail. Each report and each document filed requires the payment of a fee, which, though nominal in amount, soon reaches a considerable figure for any concern whose business is of any considerable magnitude. In addition to the fees, there is also the cost of preparing numerous reports and statements, the conduct of voluminous correspondence, etc. probably incidental thereto. It must also be remembered that the work of complying with the law of one state must be duplicated for every state having similar legislation, and the difficulty is further increased by lack of uniformity in the laws of the several states.....

"Another unreasonable provision gives extraordinary inquisitorial powers to individuals. Thus, in the Kansas act (1913) both the bank commissioner, and the individual buying securities of, or issued by, an investment company, are given full power to examine the account books of the company. This is no more startling than if a depositor in a bank had the same power of examination as the bank examiner. It is difficult to see what additional security is thus afforded, and the danger of unscrupulous use of this power by competition is great.

"The theory of the legislation under discussion is that from the standpoint of state control no distinction should be made between banks, insurance companies and fiduciary corporations on the one hand, and business in general on the other. In the opinion of those who support this form of legislation it is imperative that all forms of commercial enterprise should be subject to public regulation. Scrutiny of any of these statutes shows how comprehensive is the control exercised. By giving power to an official to determine what securities shall be sold, or shall not be sold, the state has undertaken the control of commercial credit.... In the final analysis, therefore, this legislation is an attempt to give the state (or, speaking more accurately, an individual who happens to be a state official, absolute control of the business. The formation of new companies, and the enlargement and reorganization of old ones, are placed absolutely within the power of the individual who exercises this remarkable control. The sweeping away of

freedom of enterprise is the chief ground upon which the constitutionality of these laws has been successful attacked...

"It is upon these grounds that we concur so unreservedly in the conclusion reached in 1913 by the Committee on Jurisprudence and Law Reform." (1)

3. Position Taken by the Bankers Magazine.

An article appearing in the Bankers Magazine for May, 1912, expresses the extreme attitude taken by some in opposition to the enactment of "blue sky" laws. The article states that it is the wish that every unsound, dishonest and visionary "investment" scheme could be driven out of business-- not by the enactment of laws against them, but through the development of judgment and caution upon the part of investors. It is maintained that those who are fleeced by dishonest promoters are as dishonest as the promoters themselves. These people are playing the same game, it is stated, when they seek to get more than a fair return upon their money. It is finally maintained, that "there is little ground for Government intervention to save the fool and the knave from the consequences of his own folly and knavery, especially when there are open to every one thousands of sources of reliable information as to the character of investments. If anybody buys worthless stocks of a swindling promoter, it is simply for the reason that he prefers that sort of an 'investment'. For if he did not,

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(1) Minnesota State Bar Assn. Report 1914, pp 207-221.

he would choose from the almost endless list of sound and safe securities being offered daily." (1)

4. Opinion Expressed in the Wall Street Journal.

The Wall Street Journal has declared itself hostile to "blue sky" legislation. In an editorial appearing in this publication November 29, 1915, it is stated:-

"Twenty seven states have in a short period of time printed "blue skies" on their statute books. The courts are now beginning to give them an Italian sunset effect. South Dakota is the fourth state to declare such blue sky to be unconstitutional.

"In their main features these statutes resemble their parent,- the Kansas act. It would be difficult to conceive of anything more hurtful to business than their attempt to accomplish a worthy object in the wrong way. Delegation to one man, or set of men, of authority to pass upon the prospects of any business enterprise asks too much of finite and human limitations.

"There are abuses in the promotion of new corporations and the sale of securities. There are frauds in every business, even to the sale of prunes and poultry. The wide and rapid extent of these blue sky laws may be taken as an expression of public sense of the need of protection for the honest but unsophisticated against the shrewd and slipper 'promoter'. Thrift should be protected from theft. But the methods employed are as futile as they are illegal." (2)

5. Attitude of Insurance Commissioners.

The attitude of Insurance Commissioners to "blue sky" legislation, is clearly stated in a Report of the Com-

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(1) Bankers Magazine, May, 1912.

(2) Wall Street Journal, November 29, 1915.

mittee of Unauthorized Insurance, given before the National Convention of Insurance Commissioners in 1913. Its position is as follows:-

"The committee warmly welcomes the spread of the so-called "blue sky law" into several states. Much has yet to be done to control the activity of the bonding of home purchase concerns, some of which are reputable, but many are the reverse." (1)

6. Summary Statement.

The statements of this chapter show the very hostile attitude taken by some associations and individuals toward the "blue-sky" legislation. The American Investment Bankers Association, although in sympathy with the purpose of these laws, does not consider any of them as entirely desirable, and has strenuously contested the constitutionality of such measures in the courts of several states. The Association however, has prepared a "Model Bill" which has been endorsed by the National Association of Bank Supervisors, and which they believe if adopted would obviate the constitutional difficulties involved in the present "blue-sky" laws. The special committee in Minnesota regarded legislation of the Kansas type unconstitutional, impractical and injurious. The opinion expressed by a writer in the Bankers Magazine indicates that some of the more conservative bankers at least are not in favor of "blue-sky" laws, and the position taken by the great financial publication, "The Wall Street Journal," is very adverse to "blue-

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(1) Proceedings of the National Convention of Insurance Commissioners, 1913, p 95.

sky" legislation. On the other hand, the Insurance Commissioners are quoted as endorsing such laws for adoption by the several states.

Chapter V.Results of the Operations of "Blue-Sky" Laws in Kansas
and in Other States.

Since "blue-sky" legislation has now been in operation for over five years in Kansas, and for more than three years in many other states, it may be asked whether it has justified its existence by results. Therefore, in this chapter we shall consider the methods of administration and the results achieved, and in the light of past experience, inquire as to what modifications or amendments should be made in existing "blue-sky" legislation.

1. The Experience in Kansas.

Although the records of the "blue-sky" department in Kansas are voluminous, many things unfortunately have not been recorded and the data are so incomplete as to render an accurate, statistical study of the workings of "blue-sky" legislation almost impossible. However, after consulting the files of the department and reading statements of the Banking Commissioners, one can arrive at some very general conclusions with regard to the experience of Kansas with its "blue-sky" laws.

One of the earliest results of the adoption of a "blue-sky" law in Kansas was to drive a great number of agents of fraudulent and questionable concerns from the state. The companies selling securities in Kansas were

immediately required to secure a permit from the Banking Commissioner in order to do business in Kansas. Most companies applied for permits, although the records in some instances show that this was not done. Mr. Dolley, the Bank Commissioner at that time, has given statements and figures regarding the number of applications which were made for permits and the number which were refused by the department. He maintained that during the first two years of operation of the "blue-sky" law more than 1,500 companies applied for permission to do business in the state. Seventy-five per cent of these applicants were mining, oil, and gas companies, which had no stocks of value to issue, and in which there could be no possible return for the money invested by the public. Of the remaining, twenty-five percent were said to be companies organized on a highly speculative basis, and offering no investment opportunities worthy of serious consideration. The chances were 98 in 100 they would fail. Hence, less than 100 of the 1500 applicants, according to Mr. Dolley, received certificates of good character and these were in most cases Kansas industrial and home enterprises.

These figures are found to require some qualification. An examination of the records ⁽¹⁾ of the "blue-sky" department showed that during a period of approximately two years, 162 Kansas corporations made formal application for permits. Of these, 76 were approved and 2 were definitely re-

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(1) By Dr. H. A. Millis.

fused. The remainder were not definitely acted upon, either because they failed to furnish the necessary data required by the law, or would not undergo examination when the demand was made. Most of the latter may be added to the number of rejected. It was found, however, that "a minority, but a by no means small number were given permission to proceed with their plans until they were notified to the contrary. Though not strictly in accord with the law, this appears to have been a common sense way in which to proceed for the law was really too drastic to be complied with. The several cases noted were mutual telephone companies, farmers elevators and cooperative undertakings, usually with a capital stock of \$5,000 to \$10,000. Investment companies were treated in the same way." (1)

The examination of the records showed that "of the 92 foreign applications, 28 were approved, 7 definitely rejected, and 57 not definitely acted upon. Thus, of the 254 concerns, 104 were granted the desired permit, 9 were denied permits and 139 were not finally disposed of." The above, however, do not include cases of mere inquiry. As soon as a great many companies were informed of the details the department required of them and the nature of the examinations which would be conducted, they suddenly withdrew their applications. Some of these self-rejected con-

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(1) Dr..H. A. Millis.

cerns were fraudulent and a great many were undoubtedly highly speculative. The significance of these rejections is seen in Mr. Dolley's statement, that the "blue-sky" law was able in this way to save the people of Kansas more money than required to run the state government.

The writer has checked the records of the proceedings of the Charter Board from April 7, 1915 to April 4, 1916, in order to determine the number of applications and refusals made under the new law which went into effect April 1, 1915. During that period covering approximately one year, it was found that 52 companies were given permission to sell securities in Kansas. Of these, thirty-eight were domestic companies and sixteen were foreign corporations. A further classification showed that there were 14 mining companies, 27 industrial corporations, 3 insurance corporations, 3 land and irrigation companies and 7 loan and investment concerns which were granted permission to sell securities under the new law. All of the mining companies, with one exception, were oil concerns. It might also be mentioned that 22 of the domestic companies reported their home office at Wichita, Kansas. As to the refusals, it was found that 6 companies had been refused permission to sell stock. Two of these, however, were later reconsidered and granted the privilege of disposing of some of their securities. All of the companies refused were foreign corporations. Four were land and irrigation projects, one a mining company and one an industrial concern. An oil som-

pany was refused permission to sell stock, because the securities issued for intangible assets were in excess of the reasonable value thereof. One of the land companies was refused a permit until it could show that the "business was to be conducted honestly and without unfairness, imposition or fraud." An irrigation company was refused on the ground that the "promoters plan of business is unfair and inequitable." Another land company was refused on the ground that the "securities were based upon insufficient security and their sale in the state would be unfair and inequitable." The industrial concern which was refused was a Colorado corporation capitalized at \$1,500,000. It was found upon investigation that the company issued \$800,000 for patents. The company wished to sell \$100,000 worth of stock in Kansas, out of which a promotion expense of \$30,000 was to be paid. They were refused permission to sell any securities in the state on the ground that there was not a very strong showing as to the practicability of the patent which it proposed to manufacture and sell, and, on the ground that the department could not consent to the capitalizing the patents for that immense sum, without a convincing showing that \$800,000 was a reasonable valuation of the patents. These constitute the refusals to companies which have made formal application for permission to sell securities. However, the recorded refusals are not adequate expressions of the number of companies that are rejected. In one month

as many as forty inquiries have been made for blanks, and of this number probably only six have been sent in. Many companies send in their request for permission to sell stock and the Charter Board tells them they cannot consider the application. No record is made of such refusals.

Relative to the efficiency of the Kansas "blue-sky" laws in preventing the sale of securities by fraudulent or highly speculative concerns, we have the following statements from Mr. Seaton. "Three items aggregating \$750,000 constitute the only ascertainable losses of considerable amount from fraudulent promotions in Kansas since April 1, 1911. The pilferings of other fraudulent schemes operating for the most part through the mails from without the state, and so beyond the reach of the state authorities would certainly not increase this aggregate beyond the million dollar mark.... It is safe to say that this year (1915) the losses sustained in Kansas from fraudulent promotions of every character will not exceed \$100,000 and half that sum may cover them."⁽¹⁾

However, several instances have occurred in which corporations receiving a permit from the "blue-sky" department have later passed into the hands of a receiver. In one case a Wisconsin creamery company capitalized at \$600,000 was given permission to sell stock in Kansas. It

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(1) Unpublished paper of Mr. S. T. Seaton.

was admitted in 1914 on the basis of references secured from Wisconsin bankers and on the basis of recommendations of a committee of Kansas business men who had gone to Wisconsin and conducted a personal investigation of the affairs of the company. This concern later went into the hands of a receiver. An examination of the files in the Bank Commissioner's office showed that this company had sold at least \$59,000 of stock to the citizens of Kansas. The Assistant to the Bank Commissioner, however, estimates that the company "secured some \$70,000 from the committee and friends". This is only one example of several which might be given, to show that some companies have been granted permission to sell securities in the state and have later fallen into disrepute.

Another very important effect of the Kansas "blue-sky" laws has been the reduction of commissions and promotion expenses. In this way a considerable saving has been made to purchasers of securities. For example, one domestic industrial company was recently given a \$75,000 stock permit, provided not over 20% of this should be used for promotion expenses, and that office expenses were not to exceed \$333, per month. Moreover, the total expense was not in any case to be more than \$2,000. A loan company was given permission to sell \$10,000 stock on condition that it should not pay over 15% commission to agents. Another corporation, capitalized at \$2,000,000,

was refused a permit on the ground that promotion expenses had been excessive. The statements of this concern showed that it had issued \$670,000 in stock to cover patents and organization expenses and an additional \$160,000 stock to cover experimentation. In still another instance it was found that a corporation had issued a total of \$500,000 stock to a promoter as promotion stock. The "blue-sky" department in this case required the promoter to deposit this stock with the Bank Commissioner under a contract that it should be held for twenty years and should not be sold or transferred on the books of the company during that time. Moreover, this stock is not to participate until after the common stock of the corporation has earned 7% interest. It also forced the same promoter to make good a bad investment of \$30,000. The activity of the "blue-sky" department in reducing commission and promotion expenses in such instances has undoubtedly been one of the most commendable features of the administration of the laws in Kansas.

The "blue-sky" department has had the active co-operation of the banks and newspapers of the state in its campaign against fraud. Only recently a warning by the Bank Commissioner, was published in nearly 1,000 newspapers and sent to a great number of bankers of the state, advising investors "to pass up" certain "mail order" loan and investment companies " which were operating in the state. Although this warning was the first of the kind

published by the present administration, it is the purpose of the department to issue others from time to time, warning the public of fraudulent mail operations, which cannot easily be directly attacked. The recently published warning stated that "numerous mail order Loan and Investment companies have been, for several months past, making a vigorous campaign for Kansas business through the United States mails. The Banking Department has investigated a number of these mail order enterprises and so far not one has been found in possession of a clean bill of health, while most of them are clearly both unlawful and fraudulent." It then proceeded to show the usual plan of business, which, as was pointed out in the first chapter, is to offer the investor a contract calling for a certain number of monthly payments, after which the investor becomes 'eligible' to receive a loan, providing a certain number of additional contracts have been made and the number of the investors certificate has been reached. The warning also gave a part of the opinion of Judge Bourquin, of the Federal Court of Montana, in regard to one of these concerns, which was as follows: "It loans and pays only if, after it has 'taken' for itself practically all it pleases, there is aught and sufficient accumulated therefor in a possible loan and reserve fund. The alluring feature to the applicant is a loan to build a house at rates of interest that in view of circumstances an-

tagonize sound economic principles. Under any circumstances, few could realize their hopes; that fewer would, in view of conditions and contingencies, is obvious. That this corporation is designed to profit its owners, at the expense of victims, enticed by pseudo promises and deceptive prospects, seems clear." "This same company had a suit pending in the United States District court of Kansas, and dismissed it after this decision in Montana." After stating that the department had investigated a loan enterprise sending literature from Chicago and that it had found it to be of a questionable character and also the fact that the United States District Attorney Robertson is working in accord with the department in securing the indictment of these concerns, it closes with the following paragraph: " In the meantime, the Banking Department takes this opportunity of giving the public fair warning that money invested with these mail order loan and investment enterprises will almost certainly entail loss. Any person receiving literature of this character will confer a favor by forwarding it to this Department. The Department also stands ready to serve the public by making prompt investigation and reply to any person who is tempted to deal with one of these concerns." Such publicity is certain to prevent a great amount of fraud. It should be the practice of the department to publish warnings more frequently and thus aid in educating the ordinary investing public. The Department should also co-operate more ef-

fectively with the Post Office Department in prosecuting persons using the United States mails to defraud. This was done in one instance in the prosecution of a real estate promoter who had gathered in about \$80,000 by sales of land to which he had no title and the Circuit Court of Appeals recently affirmed his sentence of three years in the Federal penitentiary. Co-operation between the State and Federal authorities will undoubtedly greatly reduce the amount of fraudulent promotion and prove a great protection to the investing public.

The law involves inconvenience and some delay to companies applying for permission to sell securities in the State. In most cases permission is granted within three weeks but in some instances there has been a delay of several months. One company, for example, applied for permission to do business in the state early in May 1915 and was not granted permission until in September of the same year.

Another effect of the law has been to "make promotion depend on men charged with the administration of the law."⁽¹⁾

Another effect of the "blue-sky" law has been to increase the expense to concerns selling securities in the state. The original law, as outlined in chapter 2,

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(1) Dr. H. A. Millis.

provided that a filing fee of \$25, be paid by a company applying for permission to do business in the state. It also required that semi-annual financial statements be filed with the department together with a fee of \$2.50. In case the Commissioner made an examination of the company, it was required to pay for the same at a cost of \$5.00 a day plus actual traveling expenses of the individual conducting the examination. The new law increases these expenses. It provides, in the first place, that quarterly financial statements be filed with the department together with a fee of \$2.50 and companies are now liable to examinations at a cost of \$15 per day plus expenses. These requirements, although somewhat burdensome upon the companies, have had their intended effect in improving business methods.

The experience of Kansas with "blue-sky" legislation has also demonstrated the inexpediency of issuing permits to companies complying with the law, as was done in administering the laws of 1911 and 1913. The permits which were issued at that time were used for advertising purposes, and while the statute specifically stated that the "Bank Commissioner nor the Charter Board in no wise recommend the securities", and that the state was in no way responsible, at the same time there was an implied approval which was frequently used in selling the securities. As has been stated by Mr. Seaton, these permits have been

one of the most objectionable things in connection with our former "blue-sky" laws, as they gave color to the idea that the holders had the sanction of the department and that the charter board was recommending the purchase of their securities. Under the new law, the Department has ceased issuing the permits and now merely gives the company notice that their application has been favorably acted upon. Any representation that the Department approves of any such security is not tolerated. For example, one company in Wichita, Kansas, had recently been advertising the fact that it had been granted permission by the "blue-sky" board to sell its stock and securities in the state. As soon as this came to the notice of the department, it immediately sent the following letter to the company:- "The action of the Board is not a recommendation to investors and is not intended as such, and the statement in your circular would tend to mislead people who do not understand that fact. This Department therefore asks you to withdraw such advertising." Thus the experience in Kansas has demonstrated the inadvisability and inexpediency of granting permits.

Although it has been impossible to make a thorough and adequate investigation to answer what the "blue-sky" has accomplished in Kansas, yet the limited study shows the following results of its operation in this state. The law has had the effect of driving a large number of agents

of fraudulent and highly speculative concerns from the state; it has caused reduction in commissions and promotion expenses and thus made a saving to investors; it has been effective in educating the public to guard itself against the fraudulent promoters operating their business through the United States mails; it has been effective in improving business methods. On the other hand, the law has involved inconvenience, added expense and some delay to companies applying for permission to sell securities. It has, moreover, tended to make promotion depend upon the men charged with the operation of the law, and, finally, has demonstrated the inadvisability of issuing permits to sell securities in the state.

2. Opinions with Reference to What "Blue-Sky" Legislation has Accomplished in Other States.

Concerning the operations of "blue-sky" legislation in other states, we have only such information as can be obtained from correspondence with officials administering the laws. Such statements, of course, are far from satisfactory because they represent interested opinion. Moreover, these replies are of a very general nature and it is therefore impossible to tabulate and classify the material contained in them. A few of the most representative quotations follow.

Iowa recently adopted a new "blue-sky" law and her

Secretary of State makes the following comment concerning its operation: "We are receiving quite a few applications under the present statute, and they are coming in in very good shape. In fact, but one or two concerns have attempted to procure a permit which seemed of doubtful character. In administering this statute, as our action was also under the former one, we have directed our investigations and examinations as to two points principally; 1st, as to whether or not the applicant was solvent, and 2nd., whether or not the applicant was engaged in an honest and legitimate business. The people of this State, so far as I have heard, seem pleased with the provisions of the present law, and were quite interested in securing the passage of this measure. It met with some opposition in the General Assembly, but not nearly sufficient to block its passage. We are proceeding carefully under the statute, and I believe the operation of the law is proving successful and will continue to be in the future. I can recall one instance wherein an application was denied, although that concern claimed to be quite a strong one, and where it was learned soon after that the corporation had gone into bankruptcy. In this one instance alone, I think the people of Iowa have been saved more than the administration of the law will cost during sometime to come."⁽¹⁾

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(1) Letter written to S. T. Seaton.

In a letter to the Kansas "blue-sky" department under date of August 11, 1915, Hon. J. S. Darst, State Auditor of West Virginia says: "As to the efficiency of our "blue-sky" law in preventing the sale of fraudulent stock and securities in West Virginia. I have to advise that so far as our information goes, it has been entirely successful. Of course, there may be some such stock and securities sold through the mails from without the state, but certainly comparatively little, if any. Our people seem to be very wary of propositions that are not registered. I have received no complaint of fraudulent promotions for several months, neither have I received any complaint of the "blue-sky" law itself."

Relative to the results of the "blue-sky" law in Arizona, the Secretary of the Arizona Corporation has written as follows: "I wish to state that from our observations the "blue-sky" law is accomplishing the purpose for which it was intended, that is to say, the elimination of fraudulent stock and security selling enterprises."

The Bank Commissioner of Michigan, Mr. Frank W. Merrick, has written to the Kansas department that "The law in the State of Michigan has, notwithstanding the holding of the Federal Court, been put in operation and enforced against everyone save those who were parties to the suit in the Federal Court. Its enforcement has been

vigorous and its operation successful. During the time it has been in operation in the state of Michigan, meetings have been held substantially every week, and stocks, bonds and securities have been examined and passed upon at these meetings. The amount of stocks, bonds, and securities which have been submitted to the Michigan Securities Commission aggregate \$43,641,168 of which \$5,095,420 have been disapproved. The result of the operation of the law of the state, however, should not be measured entirely by the amount of securities passed upon, or of the amount of securities disapproved. It has been found that one of the greatest influences of the so-called "blue-sky" laws has been its deterrent effect. Millions of dollars of worthless stock have been driven out of the state and in comparatively few instances has any attempt been made to violate its provisions, or to attempt to place on the market stocks which have not been submitted to the Commission.... A minimum of fictitious issues have been exploited in Michigan."

From the report of the Domestic and Foreign Investment Department of Missouri, it is learned that "during the eighteen and one-fourth months, closing the thirty-first day of December, 1914, 83 investment Companies have made application for permits. The Commissioner has taken up, passed upon and granted permits to 63 companies, while 13 have been refused and 7 are pending awaiting additional information before final action thereon The Com-

missioner has, at all times, given as liberal a construction as possible to this act, to the end that the spirit, rather than the letter, of the law should be observed and enforced.... The fact that this act now constitutes a part of our statutes, no doubt, has kept many corporations, desiring to sell the stock of "fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations" beyond the border lines of the state of Missouri."⁽¹⁾

The Bank Commissioner of Arkansas, Mr. John M. Davis, under date, January 10, 1916, makes this statement: "The first application for authority to sell stocks, bonds, etc. under provisions of the first Act was filed on April 10th, 1913 and since that date this department has considered 168 cases of said number of applications. It is not proper however, to conclude that 32 applications have been denied outright. Some of them have, but in most cases, the executive officer of the Act has required such modifications of the corporate status toward the end of a fair deal to proposed purchasers of stock that the applicant did not reply to his requirements and did not prosecute the application. The only case that approached fraud outright was that of the Standard Home Company, plaintiff in the suit tried before Judge Treiber.... We are proud to state that out of this long list of corporations, whose stock was

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(1) Bank Commissioner's Report, 1914. pp 687-691.

authorized for sale in this state, only one- The Arkansas Mausoleum Company- has failed ^{of} to accomplishment. The law does not intend to prohibit but to regulate the sale of investments.... We think our present law is ample toward the protection of investors in corporate stock."

We have but one report of the unsatisfactory operation of "blue-sky" legislation, and this was due to the failure to make necessary appropriations. The Department of Banking of Idaho, reports: "The Twelfth Session of our Legislature in 1913 enacted our so-called Blue Sky Law but failed to make any appropriation for the enforcement of it and the Thirteenth Session in 1915 also neglected to make any appropriation for carrying out the provisions of the act. Consequently this Department has been greatly handicapped in doing very much with the provisions of the law. We have, however, endeavored to do what we could and have rendered some service in the way of preventing wild-cat investment companies from operating in the State... I am safe in saying that the mere fact that we have a Blue Sky Law has had a deterring influence on a number of speculative investment companies and the savings of the people have no doubt been considerable.... We have not granted permission to even 25% of those applying."

These statements are typical of a much larger number which might be quoted. From them it is evident that officials charged with administering "blue-sky" legislation

in the various states are unanimously of the opinion that it affords considerable protection to investors and is on the whole a rather efficient means of eliminating fraudulent promotion.

3. Conclusion.

What then should be our conclusion? It would seem that future legislation must take one of two courses. The first of these is to eliminate the objectionable features of existing "blue-sky" legislation and so modify it that it will afford adequate protection to the investor but not be so drastic as to interfere with legitimate business enterprise. The second possible course is the adoption of a National Incorporation act following somewhat the provisions of the English Consolidated Companies Act. ⁽¹⁾ "The English Companies (Consolidation) Act of 1908 points the way and offers suggestions. The trend of thought is turning away from the inefficiency and confusion of multiplex state regulations. It is turning towards a uniform system such as can be obtained through Federal incorporation. Legal opinion differs as to whether this would be permissible under the Constitution, but it seems to be the only way out of the present difficulty." ⁽²⁾

"As a result of the experience under the Wisconsin law (blue-sky) I have come to the conclusion that the English Companies Act is a much wiser measure for the regulation

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(1) For essential features of this act see Chapter 1.

(2) Wall Street Journal, November 29, 1915.

of the issues of corporate securities than any of the laws or proposed measures that have come to my attention in this country. If I were to draft the law again, I should be guided by the fundamental principles of that Act." (1)

However, it is quite evident, as all who are familiar with the situation know, that it will be impossible to secure such a national incorporation act for a good many years to come. For the present at least, it would seem that the best course would be to adopt laws in the various states based upon the "Model Bill" of the American Investment Bankers Association. This legislation to be as nearly uniform as local conditions will permit. Such laws would undoubtedly be capable of enforcement, and would probably overcome the constitutional difficulties met with in the present legislation. The bill is satisfactory in that it is not as drastic as most of the existing "blue-sky" laws. It does not purport to give state sanction to security issues nor does it make the offering subject to state approval. The provision in the bill requiring that a state official be notified of all offerings of securities made within the state, is an excellent publicity feature which in itself will prevent most fraud. Again, it puts the State in such a position that fraudulent offerings can be most effectively stopped by prosecution. In short, it is directed primarily against fraudulent offerings and would not interfere unduly with legitimate business enterprise.

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(1) Mr. John. H. Roemer, Mulvey, Company Capitalization and Control.

Bibliography

Note: Much of the data used in the preparation of this thesis, has been obtained by personal conference with the Special Assistant to the Bank Commissioner and from the files in the Bank Commissioner's office at Topeka.

The "Blue Sky" laws of the various States- citations--.

1. Arizona. Ch. 69, laws of 1912. Investment Bankers Association, Bulletin, Vol. 1, No. 1, p 3.
2. Arkansas. Act 214, laws of 1913. I.B.A. Bulletin, Vol.1 No.1, p 6. Act 242, laws of 1915. I.B.A. Bulletin, Vol.3, No. 11, p 28. Act of 1913 sustained in case of Standard Home Co. v. John M. Davis, et al.
3. California. Act 2235 of 1913. I.B.A. Bulletin, Vol. 1, No.3, p 15.
4. Connecticut, Ch. 101, laws of 1911, and Ch. 84, 1913.
5. Florida, 1913. Ch. 2- Sec. 2661a-2661i. I.B.A. Bul. Vol.1 No. 3, p. 20.
6. Georgia. Ch. 263, laws of 1913. I.B.A. Bul. Vol.2, No.3, p 15.
7. Idaho. Ch. 117, laws of 1913. IB.A. Bul. Vol 1, No.1, p 11.
8. Iowa. Ch. 13 A. Sec. 1920 K.- 1920S. Laws of 1913. I.B.A. Bul. Vol. 1, No. 1, p 15. Ch. 13 B. Sec. 1920 T.- 1920T 18. laws of 1915, I.B.A. Bul, Vol. 3, No. 10, p 21. 1913 law unconstitutional. State Court- Harper v. Allen, I.B.A. Bul. Vol. 2, No. 7, p 5. Federal court- Compton Co. v. Allen et al, 216, Fed. 537. I.B.A. Bul., Vol 2, No. 13, pp 4-8.
9. Kansas. Ch. 133, Session Laws 1911. Ch. 141 Session Laws, 1913. I.B.A. Bul. Vol, 1, No. 1, p 20. Senate Bill No. 431-, 1915. I.B.A. Bulletin, Vol 3, No. 11, p 19. Court Decisions. State, ex rel. v. Moun Day et al, 90 Kans 449. Dawson vs. American Sugar Refining Co.- Shawnee District Court, 1914.
10. Louisiana. Act 40, laws of 1912. 1915 law in I.B.A. Bulletin, Vol. 3, No. 12, p 30.
11. Maine. Ch. 209, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 24.
12. Michigan. Act 143, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 28. Act 46, laws of 1915. I.B.A. Bulletin, Vol. 3, No. 9, p 3. 1913 law unconstitutional. Alabama Co. v. Doyle, 210 Fed. 173. 1915 law unconstitutional. N.W. Halsey Co. et al, v. Michigan Securities Commission. I.B.A. Bulletin Vol. 4, No. 5, p 55.

13. Minnesota. Ch. 385 S.F. No. 31, laws 1913.
14. Missouri. pp. 112-19, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 33.
15. Montana. Ch. 85, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 3, p 37.
16. Nebraska. Ch. 199, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 3, p 22.
17. North Carolina. Ch. 156, laws of 1913 I.B.A. Bulletin, Vol. 1, No. 3, p 27.
18. North Dakota. Ch. 104, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 43. Ch. 91, laws of 1915. I.B.A. Bulletin, Vol. 3, No. 9, p 24.
19. Ohio. 1913 law in I.B.A. Bulletin, Vol. 1, No. 3, p 29. 1914 law, pp 110-19, laws of 1914, I.B.A. Bol 2, No. 10, p 36. 1915 Section 6373-16 amended. (1914 law) Law declared unconstitutional- Geiger-Jones Co. vs. Harry T. Hall et al I.B.A. Bulletin, Vol. 4, No. 6, p 74.
20. Oregon. Ch. 341, laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 46. Ch. 324, laws of 1915. I.B.A. Bulletin, Vol. 3, No. 9, p 16.
21. South Carolina. Ch. 491, laws of 1912. Ch. 160, laws of 1915.
22. South Dakota. Ch. 319 laws of 1913. I.B.A. Bulletin, Vol. 1, No. 1, p 52. Ch. 275, laws of 1915. I.B.A/ Bulletin, Vol. 3, No. 11, p 42.
23. Tennessee. Ch. 31, 1st extra session, 1913. I.B.A. Bulletin Vol. 2, No. 10, p 32.
24. Texas. Ch. 32, 1st called session. 1913. I.B.A. Bulletin, Vol. 2, No. 9, p 17.
25. Vermont. Ch. 170, laws of 1912. I.B.A. Bulletin, Vol. 1, No. 1, p 55.
26. West Virginia. Ch. 15 laws of 1913. I.BA Bulletin, Vol. 1, No. 1, p. 59. Ch. 18 laws of 1915. I.B.A. Bulletin, Vol. 3 No. 11, p 36. 1913 law declared unconstitutional,- Bracey vs. Darst 218 Fed 482.
27. Wisconsin. Ch. 756 laws of 1913. I.B.A. Bulletin, Vol. 1, No. 6, p 7. Ch. 507 laws of 1915.

2. American Investment Bankers Association Convention Proceedings.

- (a) Proceedings of the First Annual Convention in 1912.
1. Address of Warren S. Hayden.- Blue Sky Laws and their relations to the investment banker. pp 139-48.
 2. Extract from the Annual Address of the President- George B. Caldwell, pp82-83.
 3. Report of the Committee on Legislation. pp 155-57.
- (b) Proceedings, 1913.
1. Annual address of the President- George B. Caldwell, pp. 20-21.
 2. Report of the Counsel. October 29, 1913. pp 164-67.
 3. Report of the Legislative Committee. pp 53-56.
- (c) Proceedings, 1914.
1. Report of the Committee on Legislation, pp 66-67.
 2. Report of the General Counsel, pp 75-79.
- (d) Proceedings, 1915.
1. Report of the General Counsel, pp 185-194.
 2. Report of the Legislative Committee, pp 177-179.
 3. Proposed blue sky act, pp 191-194.

3. Bulletins of the American Investment Bankers Association-
References to Articles Contained Therein.

1. State Legislatures and "Blue Sky" Legislation, Vol. 1, No. 3, pp 8-12.
2. Suppression of unsound investment securities in Germany, Vol. 1, No. 3, pp 12-14.
3. Brief of "Blue Sky" Laws. Vol. 1, No. 3, pp 37-44.
4. Statement of President Caldwell on the attitude of the Association toward blue sky legislation, Vol. 2, No. 9, pp 4-5.
5. Address of Robert R. Reed- "Regulation of the business of the investment banker." Vol. 2, No. 13, pp 9-17.
6. General Counsel of the Association, on Iowa Blue Sky Law (1915) Vol. 3, No. 11, pp 17-18.
7. Opinion of the General Counsel on the right of dealers to transact business in Blue Sky States by mail and telephone. Vol. 3, No. 12, pp 19-23.
8. General Counsel on Kansas Blue Sky law. Vol. 3, No. 11, pp 19-23.

9. Report of General Counsel- Blue Sky Laws. Vol. 3, No. 11, pp 26-27.

4. Proceedings of the National Convention of Insurance

Commissioners.

1. Proceedings for 1912, contains the Model Bill proposed by the Association.
2. Proceedings for 1913. Report of the Committee of Unauthorized Insurance. p 95-98.

Periodicals.

1. Attitude of Investment Bankers Association toward Blue Sky Legislation. Moody Magazine, 17: 263-4. May '14.
2. A Model Blue-sky law proposed. (The Investment Bankers and State Bank Supervisors Bill)
The Commercial and Financial Chronicle. Sept. 19, 1914.
pp 790-792.
3. Aryes, Arthur V. Government regulation of securities issues. Pol. Sci. Quar. 28: 586-92. D. '13.
4. Blue Sky Legislation. Bankers Magazine, May 1912.
5. Blue Sky laws. Wall Street Journal. Nov. 29, 1915.
6. Blue sky laws. Nation 96: 344-5. April 3, 1913.
7. Blue Sky Legislation. Literary Digest 46: 936-7. April 26, 1913.
8. Blue Sky Laws needed. Sat. Eve. Post. Nov. 9, 1912.
9. Blue sky law of Kansas. Lit. Digest. Nov. 30, 1912.
10. Bailey, T. D. The Blue Sky law. Maine L. Rev. 44-47.
Dec. 1913.
11. Colquitt, O.B. Gov. Texas. Message Jan. 16, 1913 pp 27-30.
12. Commercial and Financial Chronicle. Discussion of the West Virginia and Arkansas cases. Dec. 19, 1914.
13. Constitutionality of Blue Sky laws. R.S. Spilman. Am. Law. R. 49: 389-416. May 15.
14. Constitutionality of Blue Sky Laws so far as the commerce is concerned. Ed. 80 Cent. L.J. 175-176. Mr. 5, '15.
15. Dolley, J. N. Kansas blue sky law. Central Law Journal, 75: 221. S. 20, '12.
16. Decision of the United States District Court of Columbus Ohio, relative to the Ohio "Blue-Sky" law. Cincinnati Enquirer. Feb. 11, 1916.
17. Dolley, J. N. Report, published Sept. 1, 1912.
18. Effect of the Oregon "blue-sky" act. Sunset Magazine, 34: 344. F. '15.
19. Exodus of the Radical. Wall Street Journal, Feb. 15, 1916.
20. Escher, F. Overcast blue sky legislation. Harp. W. 57: 24. May 31, 1913.
21. Fr derick, W.D. Examination and control of stock selling corporations. California Bankers Assc. Proceedings, 1912, p 70.
22. Ferrin, A. W. Blue Sky Legislation. Moody Magazine, Vol. 15 pp 221-'26.
23. Government regulation of security issues. Moody Magazine, Vol. 12, p 53.
24. Gates, Lee C., and Eller, Chas. A. Law to protect the investor. Calif. Outlook. 14, No. 12: 7-9, Mr. 15, '13.

25. Gleason, A. H. Investors viewpoint. R. of Rs. 46;465p73
O. '12.
26. Hayden, W. S. Blue sky laws. Moody Magazine, Vol. 14.
27. Hayden, W. S. For more workable "blue-sky" law. Financial
World. 19: 110-12, N. 30, '12.
28. Investment Bankers Association criticism to Kansas Blue
Sky. Moody Magazine. Vol. 15, p 45.
29. Jolt to blue-sky legislation. Lit. Digest 48: 367.
Feb. 21, '14.
30. Johnson, Hiram W. Blue sky law. 1st Bien. message, Jan 6,
1913, p 15.
31. Bankers (J.Am.) Assn. Je. '14, pp 812-13.
32. Kohr, H. F. Kansas Blue Sky Law. Tech. World. 17:36-45.
Mr.'12.
33. Keyes, C. M. The bargain hunter. Worlds Work. 22: p 14922.
Oct. '11.
34. Keyes, C. M. Worlds Work. Mr. 1911.
35. Kansas blue-sky law upheld. Moody Magazine. Vol. 16 p 120.
36. Michigan Blue Sky Law Unconstitutional. Bankers Magazine
88:461-7. April 1914.
37. Model "Blue Sky" bill 'I.B.A.) Moody Vol. 15, pp 224-26.
38. Movement to test law in Oregon- and to introduce ini-
tiative to repeal at next legislature.
39. Maine's modified blue sky law, by H.M. Smith in Natl. Assn.
of supervisors of state banks. Proceedings, 1914. p 35-39.
40. Massachusetts Commission Report. Jan. 1913 (Senate No.157)
41. Mulvey, Thomas. Company Capitalization Control. Report
upon existing legislation in Canada and Elsewhere. ppIxxvii-
Ixxviii and Appendix O pp 443-467.
42. Oregon Corporation Commissioner. First Annual Report to
the Governor. 1914.
43. Progress of blue sky legislation. Moodys Magazine, Vol.
16. p 64.
44. Paper by Mr. Campbell before Va. Board of Trade at Blue-
field on Oct. 17, 1913.
45. Requirements necessary to protect the public. Bankers Mag-
azine, Nov. 1915, p 591.
46. Report of the Domestic and Foreign Investment department
in Report of Bank Commissioner, Missouri, 1914, pp 687-89.
47. Robbins, A. H. Kansas blue sky law. 75 Cent. L. J. 221-
223. Sept. 20, '12.
48. Report of special committee to investigate and report on
needed legislation (in the nature of 'blue-sky' laws, so
called) providing further regulation of the organization
and management of corporations and the sale of securities.
E. M. Morgan- 1914 Minn. St. Bar. Assn. 207-221)
49. Starkey, Edwin. Blue Sky Legislation. Moody Magazine.
Vol. 15, pp 159-160.

50. Schuyler, R. Schaff. The National Movement Restricting Security Sales. Moody Magazine. Vol. 15, pp 47-48.
51. Shall the Government regulate the sale of securities. Ann Am Acad. 63:255-62. Ja. '16.
52. Stone, Geo. W. Blue sky law. California Outlook: 14, No.10 9,16. Mr. 1, '13.
53. Synops~~is~~s of the various laws (bills) introduced (in Calif-ornia legislature) for the regulation of investment com-panies, commonly called "Blue Sky" laws. Pacific Munici-palities, 27: 136-7. Mr. '13.
54. State regulation of sales of stocks, etc. Har. L. Rev. 741-743. June '14.
55. State regulation of the sale of stocks, bonds, and other investment securities. Harv. L. Rev. 741-743, June '14.
56. Shaw, W. B. Progressive law-making in many states. Re-view of Reviews 48:88-90. July '13.
57. Updike, Frank A. "Blue Sky Legislation." *Ann. Pol. Science* 7: 230-237.

Appendix I.

Table 1.

"Blue Sky" Laws Enacted by Various States and
Officials Enforcing the Same.

1. Arizona, 1912	Corporation Commissioner
2. Arkansas, Old Act, 1913 New Act, 1915	Bank Commissioner
3. California, 1913	State Corporation Department
4. Connecticut, 1911	Commissioner on Building and Loan Associations.
5. Florida, 1913	State Comptroller
6. Georgia, 1913	Secretary of State.
7. Idaho, 1913	Bank Commissioner
8. Iowa, 1913 Held unconstitutional in 1914 1915	Secretary of State
9. Kansas, 1911 1913 (amended) 1915 New Act	Charter Board
10. Louisiana, 1912; 1915	Secretary of State
11. Maine, 1913	Bank Commissioner
12. Michigan, 1913- Law held unconstitutional 1915- Law held unconstitutional	Michigan Securities Commission
13. Minnesota, 1913	Commissioner of Insurance
14. Missouri, 1913	Bank Commissioner
15. Montana, 1913	Investment Commissioner
16. Nebraska, 1913	State Railroad Commission
17. North Carolina, 1913	Insurance Commissioner
18. North Dakota, 1913 1915 New Law	Public Examiner. State Securities Commission

19. Ohio, 1913 Supt. of Banks termed the
1914 (amended) Commissioner
1915 Held unconstitutional 1916
20. Oregon, 1913 Corporation Commissioner
1915, New Act
21. South Carolina, 1912 Insurance Commissioner
1915
22. South Dakota, 1913 State Securities Commission
1915, Held Unconstitutional
23. Tennessee, 1913 Secretary of State
24. Texas, 1913 Secretary of State or Commis-
sioner of Insurance and Banking
25. Vermont, 1912 Bank Commissioner
(Effective 1913)
26. West Virginia, 1913(unconsti- The Auditor
tutional)
1915 New Law
27. Wisconsin, 1913 The Railroad Commission
1915

Table No. 2

Exemptions ^{under} to "Blue Sky" Laws in Various States.

Arizona. (1912)

State banks.
 National banks.
 Corporations not organized for pecuniary profit.

Arkansas. (1915)

State banks.
 National banks.
 Trust companies.
 Corporations regulated by the Railroad Commission or by any public service commission or board of equal authority of any State or Territory of the U.S.
 Domestic corporations organized without capital stock, and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes.

California. (1913)

This act does not apply to dealers selling on their own account. It applies only to corporations, associations, and partnerships selling securities of their own issue, and to dealers selling for such corporations on commission. Also Corporations etc.: Subject to jurisdiction of railroad commission (which has public utilities jurisdiction), or license to do business from state banking and loan supervisor or subject to federal supervision, or mutual water companies or irrigation districts.

Connecticut. (1911)

Applies only to mining and oil companies.
 Does not apply to any corporation all of whose mines, plant, or property are situated within the state.

Florida. (1913)

Municipal corporations.
 State and National banks.
 Trust companies.
 Florida public utility corporations.
 Any corporation selling its securities only in

county in which its principal office or place of business is located.

Georgia. (1913)

The law applies to "dealers".

Exemption: individuals, corporations or associations offering securities to its own shareholders or members or to other dealers or banks.

Idaho. (1913)

Individuals (i.e. dealers not doing business as firms or corporations).

State banks.

National banks.

Trust companies.

Iowa. (1915)

Savings or national banks.

Trust companies, or building and loan associations of the state.

Corporations subject to control of any public board or commission in the state.

Corporations with full par value of stock paid for in cash or property.

Kansas. (1915).

Public or quasi-public corporations, regulated by the Public Utilities Commission of state, or by the public service commission or board of similar nature of any state or territory of the U.S.

State banks.

National banks.

Trust companies.

Mortgage companies dealing exclusively in bona fide mortgages on farm and city real estate.

Building and loan associations authorized by the Charter Board to do business in the state.

Domestic corporations organized without capital stock, for religious, charitable or reformatory purposes.

Law deals only with "speculative enterprises and speculative securities."

Louisiana. (1915)

Applies to every itinerant or traveling agent engaged in the sale of stocks or bonds of any corporation.

Table No. 2 (Continued)

Maine. (1913- effective 1914).

None.

Michigan. (1915).

Corporations regulated by the Railroad Commissioner by a public service commission or board of equal authority of any state or territory of the U.S. Corporations organized without capital stock and not for pecuniary gain.
State or national banks or trust companies, or building and loan associations of the state.

Minnesota. (1913).

Applies only to companies organized to transact the business of Insurance.

Missouri. (1913):

State and National banks.

Trust companies.

Real estate mortgage companies dealing exclusively in real estate mortgage notes, building and loan associations, co-operative companies, training schools for miners, police and firemen's relief associations, bond investment companies.

Insurance companies, investment and brokerage houses dealing (in the opinion of the bank commissioner) in municipal securities and other high grade stocks, bonds and securities, exposition companies and corporations not organized for profit (organized or to be organized in the state).

Montana. (1913).

None.

Nebraska. (1913)

The terms of this act make any investor a dealer, except that it does not apply to sales of securities purchased prior to March 1st, 1913.

Building and loan companies organized in Nebraska.

Dealers and corporations in existence at the time the act takes effect, selling stock of their issue.

Nebraska corporations created after the act goes into effect, but in existence one year or more at the time of sale, selling stock of their own issue.

Table No. 2 (Continued)

Foreign corporations in existence five years, the majority of whose stockholders, directors, and officers were at the time of beginning business and are at the date of the approval of the act citizens of Nebraska, selling stock of their own issue.

North Carolina. (1913).

This act does not apply to dealers who are selling on their own account securities which they have purchased and own.

It applies only to the sale of securities of a corporation, company, co-partnership or association organized outside the state when a part of the proceeds of the sale are to be used directly or indirectly for the payment of any commission or other expenses incidental to its organization. The act limits the possibility of commissions on stock so sold to one percent of the amount actually paid in on the purchase.

North Dakota. (1915).

Same as the Kansas "Blue Sky" law of 1915.

Ohio. (1915).

Corporations not organized for profit.
 Quasi-public corporations under the control of the public service commission of the state.
 National banks, trust companies and building and loan associations organized under the laws of the state and subject to its supervision.

Oregon. (1915).

State and National banks and trust companies.

South Carolina. (1915).

Public or quasi-public corporations which are regulated by a public service commission or board of equal authority.

National banks.

State banks and trust companies under the supervision of the State Bank Examiner.

Building and loan associations of the state.

Table No. 2(Continued)

Corporations organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes.

South Dakota. (1915).

Same as the Michigan law of 1915.

Tennessee. (1913).

State and National banks.

Trust companies.

Real estate mortgage companies dealing exclusively in real estate mortgage notes.

Building and loan associations and corporations not organized for profit.

Texas. (1913).

National banks.

Corporations having a charter granted under any act of Congress of the U.S.

State bank and trust companies organized under the laws of Texas.

Corporations organized under the Federal Reclamation act, approved June 17, 1902, or to the regulations established by the Secy. of the Department of Interior in pursuance thereof.

Corporations organized under Texas laws which do not sell stock to more than 25 purchasers.

Railroad, street railway companies.

Vermont. (1913).

Individuals (i.e. people who are not doing business either co-partnerships or corporations), state banks, national banks, trust companies, corporations under the supervision of the public service commission. Vermont corporations selling their own securities. Building and loan associations.

West Virginia. (1915).

State and National Banks

Building and Loan associations.

Corporations not organized for profit.

Table No. 2 (Continued)

Wisconsin. (1915).

Public or quasi-public corporations regulated by the Railroad Commission board of equal authority. State and national banks or trust companies or building and loan associations of the state. Domestic corporations organized without capital stock or for educational, benevolent, charitable or reformatory purposes. Corporations whose authorized capital stock added to its other outstanding securities does not exceed \$25,000.

Table No. 3

Method of Qualifying and Expense Involved.

Arizona. (1912).

Take out license.

Each company is subject to a fee of \$10 per day and expenses for making examinations.

Pay a registration of \$1.00 for each agent.

Arkansas. (1915).

Take out license.

Pay a filing fee 1/10 or 1% of face value of securities for the sale of which application is made.

Not over \$100 nor less than \$10.

\$50.00 inspection fee from dealers.

\$2.00 registration of agents.

Examination fee- not over \$10.00 per day plus 10 cents for each \$1,000 or fraction of its assets. Not over \$50.00

California. (1913).

Issuing Corporation, etc. must take out license to sell to public or procure exemption from act by getting written finding from Commissioner that it does not desire to sell to public.

Fee \$5 to sell up to \$25,000 par

" \$10 " " " \$50,000 "

" \$15 " " " "\$75,000 "

" \$20 " " " "\$100,000 "

" \$25 " " "ovBr \$100,000 par.

Agents fee \$1 (annually)

Investment broker (selling for more than one corporation etc. on commission) must prove good reputation and take out license.

Fee \$5(once for all)

Agents fee \$1 (annually)

Broker may deal in only the securities of corporations, etc. that have qualified.

Connecticut. (1911)

Mining and oil corporations to secure permit (\$25.00) annual.

Table No. 3 (Continued)

Florida. (1913).

Take out license.

Fee \$5. (once for all)

Agents fee \$1. (annually)

Agents may be required to give a bond for such an amount as the Comptroller and Attorney General may consider desirable.

Filing fee of \$5, when statements are required.

Georgia. (1913).

A fee of \$25 is filed with the initial statement for which a receipt is given and for each duplicate receipt a fee of \$1.

A filing fee of \$5 with each required financial report.

Idaho. (1913)

Take out license.

Dealers fee \$250 (once for all)

Agents fee \$1 (annually)

Filing semi-annual statement, fee \$250.

Iowa. (1915)

Secure permit.

Filing fee of \$2 and annual inspection fee of \$20, or an inspection fee of one-tenth of one percent upon the face value of the securities for sale.

Examination fee of not to exceed \$6 plus traveling expenses.

Brokers' annual fee \$50. If permit is issued after the first day in January in any year, the fee is reduced one-half. Also furnish bond of \$5,000.

Kansas. (1915)

Take out license.

Dealers' fee \$25 (once for all)

Agents' fee \$1 (annual)

Quarterly statement, fee \$2.50

Louisiana. (1915)

Obtain certificate of permission, costs \$1.

Procure license from sheriff of parish; \$5 per annum

Furnish bond of \$1,500 (in force 2 years).

Maine. (1913- effective 1914).

Take out license. (Requires at least two weeks)
Fee \$25 (once for all)
Agents fee \$5 (annually)

Michigan. (1915).

Apply for license.
Dealers Fee, \$50.
Filing fee of one tenth of one percent of the face value of the securities for the sale of which application is made. This fee, not to be less than \$10 or more than \$100.
Agents fee, \$3.
License to dealers registered under the former law for \$1 and to agents registered under the former law, for 25 cents.

Minnesota (1913).

Filing fee on application for license, (\$30)
Fee of \$2 for accepting service.
Examination expenses (\$10) a day plus expenses.
License to sell stock- \$2 annual fee.
License issued to officer or agent only upon the filing with the commissioner of insurance of a bond of \$1,000 with which conditions as may be prescribed by such commissioner of insurance and with two sureties to be approved by such commissioner of insurance.

Missouri. (1913).

An established investment and brokerage house, now doing business in this state can continue its usual business until the Bank Commissioner may see fit to place the house under the operation of this law.
Take out license (fee \$25) once for all.
Agents fee \$5 (annually)
Annual statement fee \$2.50.

Montana. (1913).

Take out license, fee \$25 (once for all).
Agents fee, \$1 (annually).
Annual statement fee, \$2.50.

Table No. 3 (Continued)

Nebraska. (1913).

Both dealers and corporations selling securities of their own issue.

Take out license (annually).

Fee \$25, first year, \$10 thereafter.

Agents license, fee \$1 (annually).

North Carolina. (1913).

Take out a license. Liable to examination at a cost of \$25 a day and expenses.

Fee, \$100.

Agent must file bond for \$1000. Fee same as prescribed for fidelity companies.

North Dakota. (1915).

Same as the Kansas law of 1915.

Ohio. (1915).

Secure a license. A \$5 filing fee to accompany application.

Annual fee \$50.

Agents fee \$5.

WHERE license is taken out for remainder of year a minimum fee of \$10 is charged.

Filing fee, \$5.

Applicant must publish notice of application.

Oregon. (1915).

Permit to do business as a dealer, fee \$5.

Registration of agents, fee \$2 (annual).

Annual statement, fee \$2.

Corporation Commissioner may make examination of corporations affairs at its expense with his own accountants.

South Carolina. (1915):

Filing fee of one-tenth of one percent upon the face value of the securities for the sale of which application is made. Not over \$100 and not less than \$2.50.

Dealer, license fee \$1.

Registration fee for agents, \$1.

Table No. 3 (Continued)

South Dakota, (1915).

Apply for a license.

Pay a filing fee of one-tenth of one percent of the gross assets as shown by its financial statement.

This fee not to be more than \$100 nor less than \$10.

Dealers fee, \$50.

Registration of agents, fee \$3 (annually).

Examination fee, not over \$10 a day plus expenses.

Tennessee. (1913).

Secure permit. Filing fee \$25 (once for all).

Agents fee, \$10 (annually).

Two financial statements annually, fee \$5.

Special examinations, fee, not over \$10 a day plus expenses.

Texas. (1913).

Apply for permit. (fee \$20).

Bond for not less than \$1000 nor more than \$100,000.

To be fixed by the Secy. or Comm. at not more than 10% of stock proposed to be issued.

No permit to foreign corporations unless at least 50% of capital stock subscribed and paid in. (Not to apply to any foreign corporation engaged exclusively in business of lending money, nor Insurance companies complying with law of state.

Examination by Secy. of Comm. at expense of Corporation and they are to pay his actual expenses plus \$7.50 per day for each day.

Promotion expenses not to be over 15% of price at which stock is sold.

Vermont. (1913).

Take out license. File bond of from \$1000 to \$25,000.

Fee, \$25 (once for all).

Register agents (no fee).

West Virginia. (1915).

Apply for license. File fee of \$5.

Annual statement (filing fee \$2).

Examination, same rules as apply to examination of Insurance Companies.

Table No. 3 (Continued)

Wisconsin. (1925).

Statements to be filed. No provision for the issuance of a license to dealer, or the payment of a fee.
Examinations of Companies at will of the Commission.
At expense of company, covering actual expense.

Table No.4

Dealings in Securities not coming within the Embrace
of the "Blue Sky" Laws.

Arizona. (1912).

Bonds of the United States.

Arizona bonds.

Bonds of some county, city, town, or school district
of Arizona.

Arkansas. (1915)

Securities of the United States; or any State or
territory, thereof, or of any county, city, town-
ship, district, or other public taxing subdivision
or of any State or Territory of the U.S., or of any
foreign government.

Unsecured commercial paper.

Securities of public or quasi-public corporations,
the issue of which securities is regulated by the
Arkansas Railroad Commission or by any public ser-
vice commission or board of equal authority of any
State or Territory of the U.S. or securities senior
thereto.

Securities of State or National banks or trust com-
panies.

Securities of any domestic corporation organized with-
out capital stock, and not for pecuniary gain, or
exclusively for educational, benevolent, charitable,
or reformatory purposes.

Mortgages upon real or personal property situated in
the state, where the entire mortgage is sold and
transferred with the note or notes secured by such
mortgage.

Increase of stock sold and issued to stockholders,
also stock dividends.

Securities which are listed in any standard manual
of information approved by Bank Commissioner.

California. (1913)

The act does not apply to the securities of the cor-
porations, associations, etc.- subject to the juris-
diction or authority of the railroad commission, nor
to those who have secured from the state banking de-
partment, the insurance commissioner or the bureau of
building and loan supervision a certificate of author-
ity or license to do business within the state nor
to securities of companies subject to federal regu-
lation or not organized for profit nor to the se-
curities of mutual water companies and irrigation
districts.

Connecticut. (1911).

Does not apply to the securities of any corporation all of whose mines, plant, or property are situated in the state.

Applies only to mining and oil corporations.

Florida. (1913).

The act applies only to corporation securities.

No Government, State and Municipal securities, domestic or foreign, come under its operation.

Georgia. (1913).

Bonds or other evidences of indebtedness of the United States, any foreign government, any state or territory of the U.S. or of any foreign government, any county, city, township, village, district, or other political or taxing sub-division of any state or territory of the United States or of any foreign government.

Commercial paper or evidences of indebtedness running not more than twelve months from date thereof.

Bonds, stocks or other securities of any insurance company or quasi-public corporations, the issue of whose securities is regulated by a public service commission or board of any state or territory of the United States or any foreign government, or insurance commissioner, or which are approved as legal investment for savings banks under the laws of any state of the U.S., first mortgages or other liens secured by first lien on real estate located in this state.

Idaho. (1913).

U.S. bonds.

Idaho State bonds.

Idaho municipal bonds.

Notes secured by mortgages on real estate located in Idaho.

Iowa. (1915).

Securities of the state, or of the U.S. or of any state or territory, or of any foreign government, or of any district, county, township, city, town or other public taxing subdivision of any state or territory of the U.S., including all drainage, county, school or other municipal bonds of the state.

Iowa. (1915). Continued-

Securities of state, savings or national banks of any state or territory of the U.S., or of trust companies or building and loan associations of the state, including the unsecured commercial paper of such institutions.

Securities of Public or quasi-public corporations, the issue of which is regulated by any public board or commission created by the state.

Promissory notes and the mortgages, contracts, collateral or other things, if any, securing the same, when such have been issued or acquired in ordinary course of legitimate business.

Stock of corporations organized under laws where no capital stock can be legally issued unless the par value of stock is paid for in full in either cash or property at its actual value before the issuance of such stock and where all property and any other thing given in exchange for such stock other than cash must be valued at not more than its actual cash value by some duly appointed officer of commission of such states.

The sale of stocks, bonds or other securities at judicial sale or by administrators or executors.

Kansas. (1915).

Securities of the U.S., or any foreign government; or of any state or territory; or of any county, city, township, district or other public taxing subdivision of any state or territory of the U.S. or of any foreign government.

Securities of public or quasi-public corporations, the issues of which are regulated by the Public Utilities Commission of the State, or by the Public Service commission or board of similar authority of any state or territory of the U. S., or securities senior thereto.

Securities of state or national banks or trust companies, mortgage companies dealing exclusively in bona fide mortgages on farm and city real estate, or building and loan associations authorized by the Charter Board to do business in the state.

Securities of any domestic corporation organized without capital stock, for religious, charitable or reformatory purposes.

Louisiana. (1915).

Applies to all stocks and bonds of any corporation sold by travelling or itinerant agents.

Maine. (1913- effective 1914).

Commercial paper running not more than nine months.

Securities legal for savings banks in any New England State.

Shares of building and loan associations under the laws of Maine.

Michigan. (1915).

Securities of the U.S., or any foreign government, or of any state or territory thereof, or of any county, city, township, district or other public taxing subdivision of any state or territory of the U.S. or of foreign government/

Unsecured commercial paper.

Securities of public or quasi-public corporations, the issue of which securities are regulated by the Michigan railroad commission or by a public service commission or board of equal authority of any state or territory of the U.S. or securities senior thereto.

Securities of state or national banks or trust companies, or building and loan associations in the state.

Securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable, or reformatory purposes.

Mortgages upon real and personal property situated within this state where the entire mortgage is sold and transferred with the note or notes secured by such mortgages.

Increase of stock sold and issued to stockholders, also stock dividends.

Securities which are listed in any standard manual or information approved by said commission.

All stocks, bonds and securities approved by the Michigan securities commission created by act 143 of 1913.

Minnesota. (1913).

All other than the sale or proposed sale of securities the proceeds of which are used for the payment of any commissions or other expenses incidental to the organization or promotion of any Insurance Company.

Missouri. (1913).

United States bonds.
 Missouri State bonds.
 Notes secured by mortgages on Missouri real estate.
 Road, drainage and levee district bonds, tuberculosis
 hospital bonds.
 Missouri municipal bonds.

Montana. (1913).

United States bonds.
 State and municipal bonds.
 Stock of State and National banks located in Montana,
 and of building and loan associations.
 Notes secured by mortgage on real estate in Montana.

Nebraska. (1913).

Securities of; Building and loan associations organized
 in Nebraska, Dealers and corporations in existence at
 the time the act takes effect, selling stock of their
 own issue; Nebraska ^{corporations} created after the act goes into
 effect, but in existence one year or more at the
 time of sale, selling stock of their own issue;
 Foreign corporations in existence five years, the
 majority of whose stockholders, directors and officers
 were at the time of beginning business and are at the
 date of the approval of the act, citizens of Nebraska,
 selling stock of their own issue.

Government bonds; State bonds; Bonds and warrants of
 municipal and public corporations or any district
 thereof.

The Stock of National banks.

The stock of state banks after they have come under the
 control of the Nebraska State Banking Board. The
 stock of trust companies after they have come under
 the control of the State Auditor. All securities that
 are legal investments for N.Y. or Massachusetts savings
 banks. Securities of companies the stocks which have
 shown an earned dividend record for at least five
 years, and the actual earnings of which are twice
 the interest charges. The securities which have
 been accepted in the listed departments of the stock
 exchange of New York, Philadelphia, Chicago, and
 Boston, issued by corporations the statements of which
 are published in standard manuals such as Poores and the
 Corporation Service. All securities that have been
 issued by authority of the Nebraska State Railway Com-
 mission. All securities sold by bona fide recognized
 stock brokers on fractional percentages as commission.

North Carolina. (1913).

The act does not apply to dealers who are selling on their own account securities which they have purchased or own.

It applies only to the sale of securities of a "corporation, company, co-partnership or association" organized outside the state when part of the proceeds of the sale are to be used directly or indirectly for the payment of any commission or other expenses incidental to its organization.

The act limits the possibility of commission on stock so sold to one percent on the amount actually paid in on the purchase.

North Dakota. (1915).

Same as the Kansas law of 1915.

Ohio. (1915).

Does not include conveyances of real estate; or, where the same have not been judicially declared invalid, and where at the time of such sale there is no default in payment of any part of the interest as principal of the same.

Mortgage bonds and notes (other than corporate bonds where more than fifty percent of the entire issue is not included in a sale to one purchaser) secured by a bona fide mortgage on real estate.

Securities of quasi-public corporations, the issuance of which has been authorized by the public service commission of this state.

The stock or obligation of any national bank, or of any bank, trust company, or building and loan association, organized under the laws of this state and subject to the supervision of the state officials.

Oregon. (1915).

Mortgages sold or purchased in their entirety.

Corporate securities issued under the supervision of the State or National Commission.

Commercial paper and acceptances eligible for rediscount at a Federal Reserve Bank.

State and National bank and trust company stock.

Securities listed on such stock exchanges and such standard manuals as the Commissioner may approve.

Bonds or other evidences of indebtedness of the U.S. or of any foreign government, or of any state or territory of the U.S. or of any municipal or public corporation of such government, state or territory.

Table No. 4 (Continued)

South Carolina . (1915).

Securities of U.S., or any foreign government; or of any state or territory thereof, or of any county, city, township, district or other public taxing subdivision of any state or territory of U.S. or of foreign government.

Unsecured commercial paper.

Of public or quasi-public corporations, the issue of which are regulated by a public service commission or board of equal authority or securities senior thereto.

Securities of national banks or of state banks or trust companies under the supervision of the state bank Examiner, or building and loan association of the state.

Securities of corporations organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes.

Mortgages upon real estate, personal property situated within the state where the entire mortgage is sold and transferred with notes secured by such mortgages.

Increase of stock sold and issued to stockholders; also stock dividends.

Securities which are listed in any standard manual of information approved by Insurance Commission.

Sales of stock, bonds, or securities by any corporation, co-partnership, or association in the county in which organized.

South Dakota. (1915).

Exactly the same as the Arkansas law of 1915, with one addition; applying to isolated or single transactions.

Tennessee. (1913).

Securities of State and National banks, trust companies, real estate mortgage companies dealing exclusively in real estate mortgage notes, building and loan associations, and corporations not organized for profit.

Bonds of the U.S., the State of Tennessee, of municipality of the state, and notes secured on real estate located in the state of Tennessee.

Texas. (1913).

- Securities of National banks nor to any corporation chartered by Congress.
- Securities of any state bank, bank and trust company, organized under the laws of Texas.
- Securities of any corporation organized under the Federal Reclamation Act.
- Securities of companies organized under Texas laws which do not sell to more than 25 purchasers.
- Securities of any railroad, street railway company, etc.
- Stock of any corporation sold by a bona fide owner of the same, not promoter or agent.
- Bona fide stock which has been sold and issued to a bona fide purchaser prior to the offering of the same for sale by broker, provided not acting as promoter.

Vermont. (1913).

- U.S. Bonds.
- Vermont state and municipal bonds.
- Notes secured by mortgages on real estate in the state.

West Virginia. (1915).

- Stocks of state and national banks, building and loan associations, and corporations not organized for profit
- Securities:
 - When sold pursuant to the order of any court.
 - When sales are confined to the old stockholders of the issuing company.
 - When the issue is taken by the incorporators only as bona fide final holders.
 - When the issue is taken by the stockholders, bondholders, or incorporators in connection with a merger.
 - When bona fide private holdings of promoted stocks, bonds, notes, contracts, or other securities are offered for sale.

Wisconsin. (1915)

Securities of the U.S. or any foreign government.
County, state, city, village, etc. of Wisconsin.
Of any state or territory of the U.S. or of any
foreign government.

Commercial paper or evidence of indebtedness maturing
not more than three years from date thereof.

Securities of public or quasi-public corporations,
regulated by the Railroad commission of Wisconsin,
or by a public service commission, or similar board
of any state or territory in U.S., or securities
senior thereto.

Securities listed on New York, Boston, or Chicago
exchanges, or any exchange approved by Railroad
Commission or securities senior thereto, (that are
likewise approved.)

Securities of any domestic corporation organized
without capital stock for educational, benevolent,
etc. purposes.

Mortgages on real and personal property where entire
mortgage is sold and transferred with the notes se-
cured by such mortgage.

Securities of any domestic corporation, whose authorized
capital stock added to its other outstanding securi-
ties shall not exceed \$25,000.

Securities of state or national banks or trust com-
panies or building and loan associations of the state.

Securities sold to banks, trust companies, or other
dealers.

Table No. 5

Information required when Making Application for
License.

Arizona. (1912).

A statement showing in full detail the plan upon which it proposes to transact business.

A copy of all contracts, bonds, or other instruments which it proposes to make with, or sell to, its subscribers.

A statement which shall show the name and location of the investment company.

Itemized account of its actual financial condition, and the amount of the property owned by it, and its liabilities, and such other information touching its affairs as the corporation commission may require.

Articles of co-partnership and all such other papers pertaining to its organization as may be required by the corporation commission.

Such other instruments and documents as may be required by the general laws of this state appertaining to corporations.

Statements to be verified by oath.

Written consent that actions may be commenced against it, in the proper court of any county of the state in which cause of action may arise, etc. by a service of process upon an agent, attorney, or other person designated by such company, and residing in the state.

Table No. 5 (Continued)

Arkansas. (1915).

Every domestic and foreign investment company to file:

A statement showing in full detail the plan upon which it proposes to transact business.

A copy of all contracts, stocks, bonds, or other instruments which it proposed to make with or sell to its contributors or customers.

A copy of its prospectus.

The proposed advertisements.

Name and location of the investment company's main office.

Name and addresses of officers.

An itemized account of its financial condition.

Articles of copartnership or association.

Articles of incorporation, constitution and by-laws and all other papers pertaining to its organization.

If foreign corporation, requires also a copy of the laws of the state in which it exists or is incorporated and certificate of the proper officer of such state showing that it is authorized to transact business there.

All papers to be verified by oath.

California. (1913).

An itemized statement of its financial condition.

A copy of all contracts which it proposes to make with or sell to the public.

A certified copy of its charter, articles of incorporation, or articles of association and all amendments thereto, and such additional information pertaining thereto as the commissioner of corporations may from time to time prescribe.

If a foreign corporation, must also file a certified copy of the law under which incorporated, and also written irrevocable consent to appoint the commissioner of corporations or successor its true and lawful attorney, upon whom all process in any action or proceeding against it may be served.

Table No. 5 (Continued)

Connecticut. (1911).

Statement of financial condition.

Location of mines or oil properties; plans; amount of work done and amount of cash expended for improvements; condition of plant and machinery.

Statements to be sworn to by President, Treasurer and Secretary.

Florida. (1913).

A statement showing in full detail the plan upon which it proposes to transact business.

A copy of all contracts, bonds, stocks or other instruments which it proposes to make with or sell to its contractors.

A statement showing the name and location of the investment company.

An itemized account of its actual financial standing, showing the amount, character and location of its property and liabilities.

Other information as the Comptroller may require.

Copy of Articles of Incorporation, constitution, and by-laws, and other papers, to be verified by the President, of the company or other officer.

File written, irrevocable consent that actions may be commenced against it in the proper court of any County in the state in which cause of action may arise or plaintiff reside, by the Service of Process upon the Comptroller.

Georgia (1913).

Dealer to file certified statement:

Name and principal place of business of the dealer.

Names, residences and business addresses of principals, officers, directors or trustees.

Names, residence and business address of a resident agent.

Non-resident dealers must file a power of attorney appointing a resident agent upon whom process may be served on behalf of the dealer. The appointment of an agent may be revoked and another appointed in his place. If an agent absents himself, the Secy. of State may appoint another in his place.

Table No. 5 (Continued)

Idaho. (1913).

- A statement showing in full detail the plan upon which it proposes to transact business.
- A copy of all contracts, bonds, or other instruments which it proposes to make with or sell to its contributors.
- A statement showing name and location of the investment company, and an itemized account of its financial condition, and the amount of its property and liabilities, and such other information as bank commissioner may require.
- Copy of articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization.
- If foreign corporation, to also file a copy of the laws of such state where incorporated.
- All papers to be verified by oath.
- Written, irrevocable consent that action may be brought against it by service of process on the Secretary of State.

Iowa. (1915).

- Copy of constitution and by-laws, or articles of co-partnership or association.
- Itemized statement of financial condition and the amount of properties and liabilities.
- Statement showing in full detail the plan upon which it proposes to transact business.
- Copy of all bonds or other securities which it proposes to make with or sell to contributors, including the price at which such stocks, bonds, or other securities are to be sold or offered for sale.
- Sample copies of all literature or advertising matter used or to be used.
- Statement showing the name and location of principal office and names and addresses of officers and directors.
- Foreign corporations to furnish certified copy of charter and instruments giving it authority to do business in such state.
- Documents to be certified.
- Consent to service of process on the Secy. of the state.

Table No. 5 (Continued)

Kansas. (1915).

- A copy of the securities to be promoted.
- A statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company.
- If securities covered by a lien, a copy of such mortgage or instrument creating such lien, with a competent appraisal of the property covered, with specific statement of all prior liens.
- Gross and net earnings, of any person or company making and issuing or guaranteeing such securities or of any property covered by any such mortgage or lien.
- All knowledge or information in the possession of promoter relative to the character of the securities.
- A copy of prospectus and advertising matter.
- Names, addresses and selling territory of agents.
- Names and address of promoter, partners, and of directors or trustees, and of any person owning ten percent of capital stock.
- Plan of conducting business.
- Articles of co-partnership or association, and all other papers pertaining to its organization.
- Copy of charter and bylaws.
- Written consent that actions may be commenced against it in the proper courts by the service of process on the Secy. of State.

Louisiana. (1915).

- Name and residence of each agent.
- Name and kinds of bonds he proposes to sell and their value.
- Domicile and offices of corporation.
- Market value of stocks and bonds.
- Location of property owned by corporation.
- Bond of \$1,500 (continues in force 2 years)

Table No. 5 (Continued ◊

Maine. (1923- effective 1914).

Application to state the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences, and business addresses of all persons interested in the business as principals, etc., specifying capacity and title, and the length of time dealer has been engaged in the business.

File power of attorney, appointing the commissioner agent for the service of process in any court of the state.

Dealer furnishes certificates of good repute.

When application is filed, the Commissioner inserts the fact once in the official state paper and once in a newspaper of general circulation where the dealers place of business is located. Any person within 2 weeks thereafter may file objections.

Michigan. (1915).

A statement showing in full detail the plan upon which it proposes to transact business.

A copy of all contracts, stocks, bonds or other instruments which it proposes to make with, or sell to its contributors or customers.

Prospectus, and proposed advertisements.

Name and location of the company.

The names and addresses of its officers.

Itemized account of its financial condition.

Copies of articles of co-partnership or association, and all other papers pertaining to its organization.

If foreign company, a copy of laws of the state in which incorporated and certificate of proper officer showing it authorized to do business there.

Irrevocable consent that suits and actions may be brought against it in any county in which a cause of action may arise or in which the plaintiffs reside.

Dealer to furnish, name, residence and business address, the general character of the securities dealt in, the place or places where the business is to be conducted within the state, and names and addresses of all persons in charge of business.

Minnesota. (1913).

A statement showing in full detail the plan upon which it proposes to transact business.
A copy of all applications for securities and forms of contracts, securities, and other instruments which it proposes to take, enter into, sell or execute.
A statement showing the name of officers and location of the principal office of the company.
An itemized account of its actual financial condition, and the amount and nature of its property and liabilities.
Such other information and in such form touching its affairs as said commissioner of insurance may require.
Foreign companies to file laws of state where organized or incorporated, and also a copy of its charter, articles of incorporation, and a certificate of authorization to do business, constitution and by-laws etc.
Insurance commissioner to be designated as process agent.

Missouri. (1913).

Statement showing in full detail the plan upon which it proposes to do business.
Copy of all contracts, bonds, or other instruments which it proposes to make with or sell to its contributors.
Name and location of investment company.
Itemized account of its financial condition.
Articles of co-partnership or association, and all papers pertaining to its organization.
If foreign company must also furnish a copy of laws of state where incorporated.
Investment houses must satisfy the Commissioner that they deal in high grade securities, but the act does not lay down any special requirement of evidence.
Companies shall appoint the Secy. of state to be their attorney, and upon whom all lawful process in any action against it may be served.

Table No. 5 (Continued)

Montana. (1913).

Itemized statement of financial condition.

Copy of all contracts, bonds or other securities which it proposes to make with or sell to its contributors.

Sample copies of all literature or advertising matter used or to be used by such company.

Copy of constitution and by-laws, or articles of co-partnership or association.

Copy of charter.

All papers to be verified.

Written consent to be service of process on the investment commissioner.

For stock brokers the commissioner is to make special investigation to ascertain reputation.

Nebraska. (1913).

Dealers: Must file statement under oath showing solvency, general plan of doing business, copy of organization papers. Liable to examination and cost for the same.

Corporations selling securities of their own Issue: Must file statement under oath showing financial condition, copies of securities, contracts, etc. Foreign corporations must file copy of laws under which organized.

North Carolina. (1913).

A statement showing in full detail the plan upon which the company proposed to transact business.

A copy of all applications for and forms of contracts, securities, bonds or other instruments which it proposes to sell to its contributors.

Name, location, and head office of the company and an itemized account of financial condition.

Copy of laws of state under which organized.

Examination if required.

North Dakota. (1915).

Same as the Kansas law of 1915.

Ohio. (1915).

Names and addresses of the officers and directors of the company.

Location of principal office.

General character and plan of business.

Foreign corporations must furnish copy of articles and copy of regulations and by-laws.

Provision for service of process.

Before licensee shall dispose of any security, he shall file (1) the name, location of principal office of the issuer and the names of its officers and directors; (2) the assets and liabilities, and capital stock of the issuer, and financial statement of preceding year; (3) description of securities and purpose of issue; (4) approximate price at which the licensee purposes to dispose of the securities.

Oregon. (1915).

A copy of the security to be issued. Prospectus or advertising matter to be used. Financial statement. Gross and net earnings for preceding year, verified by the executive officers and three directors. Names and address of the officers and directors. Purpose of issue.

Description of property and business to be followed. Brokers are to furnish evidence of good character. Are not required to file a copy of each security.

South Carolina. (1915).

Statement showing in full detail the plan of business. Copy of all contracts, stocks, bonds, prospectus, and proposed advertising.

Name and location and main office of the Company.

Names and addresses of officers.

Itemized account of financial condition.

Copy of articles of co-partnership and association.

If a foreign company, a copy of laws under which organized- charter, certificate.

Verification and certification of papers filed.

Consent, process served on Insurance Commissioner.

Dealer: (1) Name, residence, and business address;

(2) General character of securities to be dealt in;

(3) Place of conducting business.

South Dakota. (1915).

Same as the Arkansas law of 1915.

Tennessee (1913).

A statement showing the plan upon which it proposes to transact business.

A copy of all contracts, bonds, or other instruments which it proposes to make with, or sell to its contributors.

A statement showing the name and location and an itemized financial statement.

Material relating to organization- by-laws, etc.

A copy of laws under which organized, if a foreign company.

File irrevocable consent that actions may be commenced against it in the proper court of any county in the state in which a cause of action may arise or in which the plaintiff resides, by the service of process on the Secy. of State.

Texas. (1913).

Statement in full detail of plan for increasing capital stock, etc.

All the forms of contracts, stocks (or deeds).

Name and location of corporation and names of officers and addresses.

Amount of capital of any corporation already organized, proposed increase, etc., and price of stock to be sold.

If organized under other jurisdiction, copy of charter and evidence of authority.

General plan of proposed lots to be sold; contracts, and general literature to be used by townsite corporations.

Statement of promotion fees.

Each foreign corporation shall file with Secy. or Commr. a like power of the Attorney to that provided for Life Insurance Corporations.

Vermont. (1913).

Commissioner may, in his discretion, waive any of the requirements.

Statement showing in full detail the plan of business.

Copy of all bonds, contracts, etc.

Name and location of the company.

Financial statement.

Papers pertaining to its organization.

Provides for action against it by service of process on Secy. of State.

West Virginis. (1915).

Copy of securities to be promoted.

Copy of charter, articles, of association, and by-laws, etc.

Financial statement of the company. Amt. of securities.

If securities secured by mortgage or other lien, a copy of such instrument, and a competent appraisal of the valuation of the property with a specific statement of all prior liens thereon.

Gross and net earnings actual or estimated of company issuing or guaranteeing securities.

All knowledge or information of the promoter relative to the character or value of the securities and property.

Copy of any prospectus or advertising matter which will be used in connection with promotion.

Names and addresses of agents.

Name and address of promoters- of partners and of directors or trustees (and of any and all persons owning ten per centum or more of the capital stock), if the promoter be a corporation or association).

Provision for service of process on the auditor.

Wisconsin. (1915).

Dealer must file with commission:

Statement under oath, showing the name and principal place of business of such dealer and the names, residences and business addresses of officers, trustees, members, partners.

Dealer non-resident of Wisconsin:-

Must also file appointment of attorney for service of process.

Corporations selling securities of their own issue, if more than \$25,000 of proceeds are used for Commissions, organization, or promotion expenses, and must file the following information; place of business, copy of all applications for and forms of contracts etc.

Statement of name, location, head office, etc.

If a corporation organized under the laws of any state, other than Wisconsin, it shall file; copy of laws governing its existence, certificate from head office authorizing branch office or agent to do business; copy of articles of incorporation, power of attorney, and show amount paid for commissions, promotion and organization expenses, and to whom. Must file all advertisements and circulars before published.

Table No. 6.

Supervision after License is Secured.

Arizona. (1912).

Annual certified financial statements including the assets and liabilities (or oftener if required) must be made to the Corporation Commission; failure to do so within 10 days for regular or 30 days for special report works forfeiture of right to do business in the state.

Commission is court of general jurisdiction, may enforce attendance of witnesses and production of evidence and take testimony under deposition within or without the state.

Companies are subject to examination at any time the Commission thinks desirable.

Each company is subject to a fee of \$10 per day and expenses for making examinations and failure to pay the fee works a forfeiture of the right to do business in the state.

No amendment of charter, articles of incorporation, constitution, and by-laws, shall become effective until a copy of the same has been filed with and approved by the Corporation commission.

Arkansas. (1915).

All investment companies subject to examination by Bank Commissioner or authorized examiner at any time the Bank Commissioner shall deem it advisable and in such a manner as is now provided for the examination of state banks.

Annual examination of all building and loan, building or building and savings associations doing business in the state. Fee of such examinations not to exceed \$10 per day plus ten cents per thousand dollars or fraction thereof of its assets. Not to exceed \$50. If a foreign corporation, not to exceed \$50 plus expenses.

May revoke license if it appears that the further sale of said contracts, stocks, bonds or other securities would work a fraud upon the purchaser.

Information subject to public inspection.

Annual statement, accompanied with a \$2.50 fee.

California. (1913).

Liable to examination at cost of \$10 a day and expenses.

Must file copies of all circulars and advertisements. Foregoing apply both to issuing corporations and to brokers.

Issuing corporations must also file semi-annual report till securities are sold and proceeds disposed of.

Broker liable to be called on for information relating to securities he is selling.

Connecticut. (1911).

Subject to the same supervision as banks, savings banks, and trust companies. No corporation doing business shall guarantee, by endorsement or otherwise, debenture bonds secured by loans upon real estate to an amount exceeding ten times the amount of the capital paid up in cash and the cash surplus of said corporation.

Florida. (1913).

Must file financial statement when required. Fee \$5.

Georgia. (1913).

May require a statement showing the securities offered, any reduplicated circulars, including copies of advertising published in any newspaper, magazine, or periodical.

May limit such order to the securities of any particular class.

Financial statement must be filed when required.

Assets and earnings.

Copy of dealers contract showing his compensation.

Information to show offer is honest and in good faith and sufficient to enable purchasers to form a judgment as to the value of the security.

Fee \$5.

Idaho. (1913).

Must get approval of securities before offering.

Must file semi-annual financial statement.

Liable to examination at cost of \$5 a day and expenses.

Mining corporations file annual statement with the Inspector of Mines. This report to contain the names of each mining claim and the total number of such claims owned, leased, or otherwise held, forming the basis for the issue of stock certificates, and the number being worked and developed, and the mining district and county in which such property is located; the nature of the title character of improvements, description of work done, the total consideration paid out therefor; total number of shares that corporation authorized to issue; total number of shares set aside; the total number of shares of stock sold and the money or consideration received therefor and the number of shares remaining unsold.

Iowa. (1915).

Must get approval of securities before offering.

Must file annual financial statement.

Fee, \$20 or one-tenth of one percent on the amount of securities proposed to be sold.

\$10 per day penalty for each day company transacts business in violation of act.

Examination of list of stocks, bonds and securities sent in by brokers each month.

Liable to examination at cost of \$6 per day plus expenses.

Agents fee, \$1 (annual)

Kansas. (1915).

Must secure approval of "speculative securities" before offering them for sale.

Must file quarterly statements of financial condition.

Are liable to examination at a cost of \$15 per day plus expenses.

Table No. 6 (Continued)

Louisiana. (1915).

A separate certificate must be obtained and separate bond issued for each corporation the agent represents.

Any purchaser has action on the bond and can recover if he loses by misrepresentation of the agent.

Maine. (1913- effective 1914).

Bank commissioner has right at any time to require filing list of securities being offered or offered during preceding six months.

Also he has a right to require filing of circulars and advertising matter, and information about issues to show that they are being offered in good faith.

Michigan. (1915).

Commission may cause an appraisal to be made, at the expense of the company, of the property of the company, including the value of patents, good will, promotion and intangible assets, and it may fix the amount of stocks, bonds and securities that shall be issued in payment for patents property, good will, promotion and intangible assets.

Examination at will of the commission. Fee not to exceed \$6 per day plus expenses of individual making examination.

Furnish annual financial statement. Fee \$1.

Minnesota. (1913).

Advertisements to bear serial number, a copy of which shall be filed with Commissioner of Insurance.

Contract of subscription to be in writing.

Interest of person making sale must appear in contract of subscription.

Annual statement to be filed.

Commissioner given power of revocation.

Commissioner may make examinations of applying companies, latter paying \$10 per diem and expenses.

Change in articles to be approved by Commissioner, or cessation of business.

Missouri. (1913).

Must get approval of securities before selling.
Must file annual financial statement.
Liable to examination at cost of \$10 a day and expenses

Montana. (1913).

Must get securities approved before offering- except those specially qualifying as "stock brokers" who only need file each month a list of securities on sale and handled during the preceding month.
Must file annual financial statement.
Liable to examination at cost of \$10 a day and expenses.

Nebraska. (1913).

Dealers: Must file each month list of offerings under oath. Must state any commissions or bonus direct or indirect in excess of 15%, and this must be stated on the face of the stock sold. Must file copies of all circulars and advertising.
Corporations selling securities of their own issue: File annual financial statement (per value of all stock must be \$100). File circulars and advertisements with Commission. Commissions in excess of 15% must be stated on the fact of the stock sold.

North Carolina. (1913).

Must file annual statement.

North Dakota. (1915).

Same as the Kansas law of 1915.

Ohio. (1915).

Examination of issuer or owner at the discretion of the commissioner. Applicant to pay the expense for such examination on which expense shall be determined by the commissioner.
License revoked by commissioner if he deems the licensee is of bad business repute, has violated the provisions of the act, or is engaged or is about to be engaged in illegitimate business or in fraudulent transactions.

Oregon. (1915).

Dealer: Must file each month a list of securities handled during preceding month.

Annual statement; fee \$2.

Examination at will of Commissioner (same requirements as for state banks by the Spt. of Banks)

South Carolina. (1915).

Examination at will of commissioner at expense of investment company (not over \$7 per day plus expenses).

Information open to public.

Annual statement-fee \$1 showing financial condition.

South Dakota. (1915).

Examination at will of Commission. Fee, not to exceed \$10 a day plus expenses.

File an annual statement of financial condition; fee \$5.

May revoke license if it appears that the further sale of said bonds, stocks, and contracts or other securities would work a fraud upon the purchaser.

Commission may issue in pamphlet form, or by means of newspaper advertisements anything relating to the companies which it deems of public interest.

Tennessee. (1913).

Examination of Investment company at will of the Secy. of State. Not over \$10 a day plus expenses.

Require two financial statements annually. Fee \$5, each.

Texas. (1913).

Books to be opened to Commissioner or agents.

If after expiration of two years from granting permit corporation has failed to organize must refund to subscribers the amount paid to promoter. Secy. of State may grant at extension of time.

Examination of companies \$750 a day plus expenses.

Vermont. (1913).

Liable to have semi-annual financial statements required. Fee \$5.

Liable to examination at cost of \$10 a day and expenses.

West Virginia (1915).

In case of stocks, the total promotion expense not to exceed ten percent of the value of the stock sold, and if sold at less than par, ten percent of the selling price.

In case of bonds, notes, contracts, or other securities the total promotion expenses shall not exceed five percent of par value.

Annual financial statement fee, \$2.

Companies subject to examination at any time the auditor deems advisable. Fees same as those relating to the examination of Insurance companies.

Wisconsin. (1915).

After license is taken out Railroad Commission may require from dealers at any time:

Information relating to securities sold or offered for sale.

That dealer file copies of circulars and advertisements.

Evidence that security is being offered in good faith.

Commission has power to examine the company (selling its own issue) at company's expense.

Advertisements to be numbered and filed.

Supervision of subscription contract.

Commission and promoter's profits limited to persons named.

Appointment of Receiver for Investment Companies.

Arizona. (1912-)

If the assets do not equal liabilities.

If the business is conducted in an unsafe, inequitable or unauthorized manner.

If the interests of the investors are jeopardized.

If the Company refuse without adequate reasons to file any documents required.

Arkansas. (1915).

No provision.

California. (1913).

No provision.

Connecticut. (1911).

No provision.

Florida (1913).

No provision.

Georgia. (1913).

No provision.

Idaho. (1913).

If the assets are impaired to the extent that such do not equal its liabilities.

If conducting its business in unsafe, inequitable or unauthorized manner, or

If it is jeopardizing the interest of its stockholders, or investors.

If fail or refuse to file papers and documents required.

Iowa. (1915).

No provision.

Kansas. (1915).

No provision.

Louisiana. (1915).

No provision.

Maine. (1913-effective 1914).

No provision.

Michigan. (1915).

No provision.

Minnesota. (1913).

No provision.

Missouri. (1913).

If assets are impaired to the extent that such assets do not equal its liabilities.

If conducting business in unsafe, inequitable or unauthorized manner.

If the interests of the investors are jeopardized.

If the company refuse without adequate reasons to file any documents required.

Montana. (1913).

If assets do not equal liabilities.

If conducting business in unsafe, inequitable or unauthorized manner.

If the interests of the investors are jeopardized.

If the company refuse without adequate reasons to file any documents required.

Nebraska. (1913).

No provision.

North Carolina. (1913).

No provision.

North Dakota. (1915).

No provision.

Ohio. (1915).

No provision.

Oregon. (1915).

If interest of the investors is jeopardized.

If the company refuse without adequate reasons to file any documents required.

The corporation commissioner to report the facts to the Attorney General or to the District Attorney having jurisdiction, who shall institute such proceedings as appropriate to protect the interests of stockholders and other creditors and investors.

South Carolina. (1915).

No provision.

South Dakota. (1915).

No provision.

Tennessee. (1913).

When assets do not equal liabilities.

If conducting business in an unsafe, inequitable, or unauthorized manner.

If jeopardizing the interests of the stockholders and investors.

Failure to file documents when required, without satisfactory reason.

Secy. of State to communicate facts to Atty. General who shall commence proceedings.

Texas. (1913).

No provision.

Vermont. (1913).

Give notice to Attorney General when:

Assets do not equal liabilities.

Conducting business in an unsafe, inequitable, or unauthorized manner.

When jeopardizing the interests of investors.

Failure to file documents without giving satisfactory reason.

West Virginia. (1915).

Same as provided for in the Vermont Law.

Wisconsin. (1915).

No provision.

Appeal in Case of Refusal to Grant Permit.

Arizona. (1912).

No provision.

Arkansas. (1915).

An appeal will always lie to the chancery court, upon petition of any person aggrieved and upon payment of the costs of preparing such copies of papers and other documents desired by said petitioner from any final orders of the Bank Commissioner. The granting of such appeal however, shall not, unless so ordered by such court or other court of competent jurisdiction, operate as a stay of proceedings.

California. (1913).

An appeal may be taken from any decision of the commissioner of corporations under the act, by filing with the clerk of the superior clerk of California, a certified transcript of all papers in the office of the commissioner, of corporations relating to such decision. Fee of ten cents for each folio and \$1 for certification. The court upon such appeal limited to a consideration of the question whether there has been abuse of discretion on the part of the commissioner in making such decision.

Connecticut. (1911).

No provision.

Florida. (1913).

No provision.

Georgia. (1913).

If a dealer is ordered not to sell securities he may apply to a Judge of the Superior Court of the Atlanta Circuit for an order to the Secretary of State to show cause why his order shall not be revoked and the order of the Secy. of State may be suspended pending the determination of the matter.

Idaho. (1913).

No provision.

Iowa. (1915).

Any company that is denied a certificate to transact business in the state, or whose certificate is cancelled, has right to appeal to the executive council of the state from any decision of the Secy. of State, within twenty days after such decision.

If the company appeals and receives an adverse decision, it may appeal to the district court by service on the attorney general.

A supersedeas may be had by any person denied a permit to do business in the state and who has thereafter perfected an appeal by the execution and filing of a penal bond to the State for the use and benefit of the State for any costs or damages incurred by reason of appeal and for the use and benefit of any purchaser of any stocks, bonds or other securities from the appellant during the pendency of said appeal; the bond to be in the sum fixed by the judge of the district court to which said appeal is taken and approved by the clerk of the court, and shall provide that if the order appealed from is affirmed, the party appealing shall pay to the state all costs and damages by reason of said appeal, and shall pay to the secy. of state for the use and benefit of any purchaser who has suffered damage by reason of the purchase of any security during the pendency of such appeal the amount fixed in said bond or so much thereof as may be necessary.

Kansas. (1915).

Company dissatisfied with findings of Charter Board may within thirty days from the making thereof commence action in any court of competent jurisdiction against such Board. Appeals may be taken from the decision of the district court to the supreme court by either party. Pending such action, findings of charter board are prima facie evidence that they are just and reasonable and that the facts found are true, and findings shall remain full force and effect

Table No. 8 (Continued)

Louisiana. (1915).

No provision.

Maine. (1913- effective 1914).

Appeals may be taken from any decision of the Commissioner to the Supreme Judicial Court.

Michigan. (1915).

The supreme court upon petition of any person aggrieved may review by certiorari any final order of determination of the commission. The issuance of the writs shall not, however, unless specifically ordered by the court, operate as a stay of proceedings.

Minnesota. (1913).

No provision.

Missouri. (1913).

Any corporation, individual etc. receiving notice from the bank commissioner that it shall do no further business in the state, may apply to a judge of the circuit court of the county where the company has main office if a domestic company; or to a judge of the circuit court of Cole county, if a foreign company, for an order addressed to the commissioner of banking to show cause why the commissioner's order should not be revoked, and such judge shall have full power to hear and determine the matter, and to make such provision and order as justice and equity may require.

Montana. (1913).

An appeal may be taken from the decision of the investment commissioner, to the state board of examiners of the state. This body may reverse the decision of the investment commissioner.

Nebraska. (1913).

No provision.

North Carolina. (1913)

No provision.

North Dakota. (1915)

Same as the Kansas law of 1915.

Ohio. (1915).

Appeal for reversal of decision of Commissioner to be made within thirty days after such decision, in the court of common pleas in Franklin county. Burden to rest upon the plaintiff to disprove the grounds assigned in the official action complained of. The courts decision shall consult only the rights of the plaintiff and the protection of the public and the "commissioner" shall prosecute no proceedings to obtain a reversal of judgment rendered in favor of the plaintiff. May apply for a new license after thirty days.

Oregon. (1915).

Any person aggrieved by any decision of the Corporation Commissioner under the act, has appropriate remedy, in any court having jurisdiction for the correction of such decision, if the same be erroneous or unjust or without jurisdiction.

South Carolina. (1915).

No provision.

South Dakota. (1915).

The Supreme court upon petition of any person aggrieved may review by certiorari any final order of determination of the Commission. The issuance of the writs shall not, however, unless specifically ordered by the Court, operate as a stay of proceedings.

Tennessee. (1913).

No provision.

Texas. (1913).

If refused permit, may bring suit in District Court of Travis county, Texas.

Vermont. (1913).

No provision.

Table No. 8 (Continued)

West Virginia. (1915).

Any person aggrieved by the decision of the auditor of the state shall within sixty days thereafter, have the right to petition any court having jurisdiction, or the judge thereof in vacation, for a writ of mandamus, or for other appropriate remedy, provided by existing law, for the correction of said decision, if the same be erroneous or unjust, or without jurisdiction.

Wisconsin. (1915)

No provision.

Executive Departments Especially Created or Delegated
to Enforce the Act.

Arizona. (1912)

None. (Under the control of the Corporation Comm.)

Arkansas. (1915)

None (Duties devolving on the Insurance commissioner to pass automatically to Bank Commissioner when created)

California. (1913).

State Corporation department including a Corporation Commissioner, appointed by the Governor to hold office at his pleasure, at \$5000 per year and assistants.

Connecticut. (1911).

None (Commissioner on Building & Loan Associations)

Florida. (1913).

None. (The comptroller and Attorney General)

Georgia. (1913).

None. (The Secretary of State)

Idaho. (1913).

None. (The Bank Commissioner)

Iowa. (1915).

None. (The Secretary of State)

Kansas. (1915)

None. (The Charter Board)

Louisiana. (1915).

None. (The Secretary of State)

Table No. 9 (Continued)

Maine. (1913- effective 1914).

None. (The Bank Commissioner)

Michigan. (1915).

Michigan Securities Commission, consisting of the
Commissioner of the state banking department, the
State Treasurer, and the Attorney General.

Minnesota. (1913).

None. (The Commissioner of Insurance)

Missouri. (1913):

None. (The Bank Commssioner.)

Montana. (1913).

The office of Investment Commissioner created- the
State Auditor.

Nebraska. (1913)

None. (The State Railroad Commission)

North Carolina. (1913)

None. (Insurance Commissioner)

North Dakots. (1915)

None. (The State Banking Board- the Examiner)

Ohio. (1915)

None. (Department in charge of the Superintendent of
Banks termed the Commissioner)

Oregon. (1915).

Established the Corporation Department. Corporation Com-
missioner in charge, appointed by Governor, to serve
four years, at salary of \$3,000 per annum.

South Carolina. (1915).

None. (THE Insurance Commissioner)

South Dakota. (1915)

Created State Securities Commission, consisting of the Public Examiner, Attorney General and the Commissioner of Insurance. To appoint a Secretary at a salary of \$1,800 per annum who shall have equal power and authority, subject to the approval of the Commission.

Tennessee. (1913)

None. (Secretary of State)

Texas. (1913)

None (Secretary of State or Commissioner of Insurance and Banking)

Vermont. (1913)

None. (The Bank Commissioner)

West Virginia (1915)

None (The Auditor)

Wisconsin. (1915)

None. (The Railroad Commission)

Regulation and Supervision of Investment Companies in
Kansas. House Bill No. 906. Session of 1911.

An act to provide for the regulation and supervision of investment companies and providing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas.

Section 1. Every corporation, every co-partnership or company, and every association (other than state and national banks, trust companies, real estate mortgage companies dealing exclusively in real estate mortgage notes, building and loan associations and corporations not organized for profit), organized or which shall be organized in this state, whether incorporated or unincorporated, which shall sell or negotiate for the sale of any stocks, bonds or other securities of any kind or character other than bonds of the United States, the state of Kansas, or of some municipality of the State of Kansas, and notes secured by mortgages on real estate located in the state of Kansas, to any person or persons in the state of Kansas, other than those specifically exempted herein, shall be known for the purpose of this act as a domestic investment company. Every such investment company organized in any other state, territory or government, or organized under the laws of any other state, territory or government, shall be known for the purpose of this act as a foreign investment company.

Section 2. Before offering or attempting to sell any stocks, bonds or other securities of any kind or character other than those specifically exempted in section 1 of this act to any person or persons or transacting any business whatever in this state, excepting that of preparing the documents hereinafter required, every such investment company, domestic or foreign, shall file in the office of the bank commissioner of this state, together with a filing fee of two dollars and fifty cents, the following documents to wit: A statement showing in full detail the plan upon which it proposes to transact business. A copy of all contracts, bonds or other instruments which it proposes to make with or sell to its contributors. A statement which shall show the name and location of the investment company, and an itemized account

of its actual financial condition, and the amount of its property and liabilities, and such other information touching its affairs and said bank commissioner may require. If such investment company shall be a co-partnership or an unincorporated association, it shall also file with the bank commissioner a copy of its articles of co-partnership or association, and all other papers pertaining to its organization, and if it be a corporation organized under the laws of Kansas it shall also file with the bank commissioner a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the said bank commissioner a copy of the laws of such state, territory or government under which it exists or is incorporated, and also a copy of its charter, articles of incorporation, constitution and by-laws and all amendments thereof which have been made and all other papers pertaining to its organization.

Section 3. All of the above described papers shall be verified by the oath of a member of a co-partnership of company, if it be a co-partnership or company, or by the oath of a duly authorized officer, if it be an incorporated or unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified to by the officer of whose records or archives they form a part, as being correct copies of such records or archives.

Section 4. Every foreign investment company shall also file its written consent, irrevocable, that actions may be commenced against it in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign investment company and by the signature of a member of the co-partnership or company, if it be a co-partnership or company, or by the signatures of the president and secretary of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, and shall be accompanied by a dully certified copy of the order or

resolution of the board of directors, trustees or managers of the corporation authorizing the said secretary and president to execute the same.

Sec. 5. It shall be the duty of the bank commissioner to examine the statements and documents so filed, and if said bank commissioner shall deem it advisable he shall make or have made a detailed examination of such investment companys affairs, which examination shall be at the expense of such investment company, as herein after provided; and if he finds that such investment company is solvent that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contract contain and provide for a fair, just and equitable plan for the transaction of business, and in his judgment promises a fair return on the stocks, bonds and other securities by it offered for sale, the bank commissioner shall issue to such investment company a statement reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the bank commissioners office for public inspection and information, that such investment company is permitted to do business in this state, and such statement shall also recite in bold type that the bank commissioner in no wise recommends the securities to be offered for sale by such security company. But if said bank commissioner finds that such articles of incorporation or association, charter, constitution and by-laws, plan of business or proposed contract contain any provisions that are unfair, unjust, inequitable or oppressive to any class of contributors, or if he decides from his examination of its affairs that said investment company is not solvent and does not intend to do a fair and honest business, and in his judgment does not promise a fair return on the stocks, bonds, or other securities by it offered for sale, then he shall notify such investment company in writing of his findings, and it shall be unlawful for such company to do any further business in this state until it shall so change its constitution and by-laws, articles of incorporation or association, its proposed plan of business and proposed contract and its general financial condition in such a manner as to satisfy the bank commissioner that it is solvent and its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contract provide for a fair, just and equitable plan for the transaction of business, and does, in his judgment, promise a fair return on the stocks, bonds,

and the other securities by it offered for sale; provided that all expenses paid or incurred and all fees or charges received or collected for any examination made under the provisions of this section of this act shall be reported in detail by the bank commissioner and a full report and record thereof made in detail.

Section 6. It shall not be lawful for any investment company, either as principal or agent, to transact any business, in form or character similar to that set forth in section 1 of this act, except as is provided in section 2 of this act, until it shall have filed the papers and documents above provided for. No amendment of the charter, articles of incorporation, constitution and by-laws of any such investment company shall become operative until a copy of the same has been filed with the bank commissioner as provided in regard to the original filing of charters, articles of incorporation, constitution and by-laws, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statement required to be filed by section 2 of this act, or to make any contracts other than that shown in the copy of the proposed contract required to be filed by section 2 of this act, until a written statement showing in full detail the proposed new plan of transacting business and copy of the proposed new contract shall have been filed with the bank commissioner, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the bank commissioner obtained as to making such proposed new plan of transacting business and proposed new contract.

Section 7. Any investment company may appoint one or more agents but no such agent shall do any business for said investment company in this state until he shall first register with the bank commissioner as agent for such investment company, and for each of such registrations there shall be paid to the bank commissioner the sum of one dollar. Such registration shall entitle such agent to represent said investment company as its agent until the 1st day of March following, unless said authority is sooner revoked by the bank commissioner; and such authority shall be subject to revocation at any time by the bank commissioner for cause appearing to him sufficient.

Section 8. Every investment company, domestic or foreign, shall file at the close of business on

Dec. 31st and June 30th of each year, and at such other times as required by the bank commissioner a statement verified by the oath of the co-partnership or company, if it be a co-partnership or company, or by the oath of a duly authorized officer, if it be an incorporated or unincorporated association, setting forth in such form as may be prescribed by the said bank commissioner, its financial condition, and the amount of its assets and liabilities, and furnishing such other information concerning its affairs as said bank commissioner may require. Each regular statement of Dec. 31st or of June 30th shall be accompanied by a filing fee of two dollars and fifty cents. Any investment company failing to file its report at the close of business Dec. 31st or June 30th of each year within ten days of that date, or failing to file any other or special report herein required within thirty days after receipt of request or requisition therefor, shall forfeit its right to do business in this state.

Sec. 9. The general accounts of every investment company, domestic or foreign, doing business in this state, shall be kept by double entry, and such company, its co-partners, or managing officers shall at least once in each month make a trial balance of such accounts, which shall be recorded in a book provided for that purpose; such trial balances and all other books and accounts of such company shall at all times be open to the inspection of stockholders and investors in said company or investors in the stocks, bonds or other securities by it offered for sale and to the bank commissioner and his deputies.

Sec. 10. The bank commissioner shall have general supervision and control, as provided by this act, over any and all investment companies, domestic or foreign, doing business in this state, and all such investment companies shall be subject to the examination by the bank commissioner or his duly authorized deputies at any time the bank commissioner may deem it advisable and in the same manner as is now provided for the examination of state banks. The rights, powers, and privileges of the bank commissioner in connection with such examinations shall be the same as is now provided with reference to examinations of state banks; and such investment company shall pay a fee for each such examination of not to exceed five dollars for each day or fraction thereof plus the actual traveling and hotel expenses of said bank commissioner or deputy that he is absent from the capital building for the purpose of mak-

king such examination, and the failure or refusal of any investment company to pay such fees upon the demand of the bank commissioner or deputy while making such examination shall work a forfeiture of its right to do business in this state.

Section 11. Whenever it shall appear to the bank commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interest of its stockholders or investors in stocks, bonds, or other securities by it offered for sale, or whenever any investment company shall fail or refuse to file any papers, statements or documents required by this act, without giving satisfactory reasons therefor, said bank commissioner shall at once communicate, such facts to the attorney general who shall thereupon apply to the supreme court or to the district court where such company is located or is doing business or to a judge of either of said courts for the appointment of a receiver to take charge of and wind up the business of such investment company and if such fact of facts be made to appear it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

Section 12. Any person who shall knowingly or willfully subscribe to or make or cause to be made any false statements or false entry in any book of such investment company or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of such investment company, or shall make or publish any false statement of the financial condition of such investment company, or the stocks, bonds or other securities by it offered for sale, shall be deemed guilty of a felony, and upon conviction thereof shall be fined not less than two hundred dollars nor more than ten thousand dollars, and shall be imprisoned not less than one year nor more than ten years in the state penitentiary.

Section 13. Any person or persons, agent or agents, who shall sell or attempt to sell the stock, bonds or other securities of any investment company, domestic or foreign, or the stock, bonds or other securities by it offered for sale, who have not complied with the provisions of this act, or any investment company, domestic

or foreign, which shall do any business, except as provided in section two of this act, or any agent or agents who shall do or attempt to do any business for any investment company, domestic or foreign, in this state, which agent is not at the time duly registered and has fully complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than one hundred dollars nor more than five thousand dollars, or by imprisonment in the county jail for not more than ninety days, or both such fine and imprisonment, at the discretion of the court.

Section 14. All fees herein provided for shall be collected by the bank commissioner and by him shall be turned into the state treasury and all fees so turned into the state treasury are hereby reappropriated to the bank commissioner for the purpose of paying all salaries and expenses necessary for carrying this act into effect; and the bank commissioner is hereby authorized to appoint such clerks and deputies as are actually and absolutely necessary to carry this act into full force and effect, none of whom shall be related by blood or marriage to such bank commissioner or any of his deputies. All money actually and necessarily paid out by the bank commissioner to any clerk or deputy appointed under this act, as salaries, or any money actually and necessarily paid out by the bank commissioner, or by any clerk or deputy appointed under this act, for traveling or incidental expenses shall be paid by the state treasurer out of such fees upon the state auditors warrants, to be issued upon sworn vouchers containing an itemized account of such salaries or expenses.

Section 15. Should the courts declare any section of this act unconstitutional or unauthorized by law, or in conflict with any other section or provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional, and shall not affect any other section or part of this act.

Section 16. All acts and parts of acts in conflict herewith are hereby repealed.

Section 17. This act shall take effect and be in force from and after its publication in the official state paper.

Approved, March 10, 1911.

Published, March 15, 1911.

THE AMENDED "BLUE SKY" LAW OF KANSAS (1913).

Regulation and Supervision of Investment

Companies in Kansas.

Chapter 133, Session Laws 1911 (H.B.906) as amended by Senate Bill 485, Session of 1913.

An Act to provide for the regulation and supervision of investment companies and providing penalties for the violation thereof.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The name "Investment Company" as used in this act shall include: (1) Every person, corporation, company, co-partnership, or association whether incorporated or unincorporated except state and national banks, trust companies, real estate mortgage companies dealing exclusively in real estate mortgage notes, building and loan associations, and other associations and corporations not organized for profit, which shall offer or negotiate for the sale of, take subscription for, or sell any stocks, bonds, contracts, or other securities of any kind or character- other than bonds of the United States, state or municipal bonds, stock of state or national banks, building and loan associations, or corporations not organized for profit, and notes secured by mortgages on real estate, located in the state of Kansas- to any person or persons in the state of Kansas. (2) Every person, corporation, company, co-partnership or association who shall issue, sell, offer or negotiate for the sale of any contract for deed, bond for deed, or other papers by whatever names such instruments may be designated, providing that when certain payments are made or certain conditions fulfilled, a deed or title will be delivered to certain parts or parcels of land, providing that such land is not located in the state of Kansas. (3) Every person, company, co-partnership, corporation, or association organized or which may hereafter be organized, doing business as a so-called investment company, loan, benefit, cooperative, home, or guarantee company, not specifically covered by the foregoing provisions, and for the licensing, control and supervision of which there is no law in force in this state.

Sec. 2. It shall be unlawful for any investment company or any representative thereof, to sell, take subscription for, offer or negotiate for the sale, in any manner whatsoever, of any stocks, bonds, contracts, or other securities of any kind or character, other than

those exempted from the provisions hereof without a permit from the bank commissioner. Before securing such permit it shall be necessary for each and every investment company to file in the office of the bank commissioner, together with a filing fee of twenty-five dollars, the following papers, documents, statements, and such other information as said bank commissioner shall deem necessary in each case to-wit: (1) An itemized statement of its actual financial condition, and the amount of its assets and liabilities. (2) A copy of all contracts, stocks and bonds, or other securities which it proposes to make, sell or negotiate to sell to its contributors. (3) Sample copies of all literature or advertising matter used or to be used by such investment company in the sale of its securities. (4) A copy of its constitution and by-laws or articles of co-partnership or association. (5) If it be an incorporated investment company it shall also file a copy of its charter, and if said company be not organized under the laws of the state of Kansas it shall be required to comply with the laws relating to the admission of foreign corporations to do business in the state of Kansas. (Note.- The above are sections 1 and 2 of Senate bill No. 485 of the Session of 1913, and amends and repeals sections 1 and 2 of chapter 133 of the Session Laws of 1911.)

Sec. 3. All of the above-described papers shall be verified by the oath of a member of a co-partnership or company, if it be a co-partnership or company, or by the oath of a duly authorized officer, if it be an incorporated or unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified to by the officer of whose records or archives they form a part, as being correct copies of such records or archives.

Sec. 4. Every foreign investment company shall also file its written consent, irrevocable, that actions may be commenced against it, in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff may reside, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign investment company and by the signature of a member of the co-partnership or company, if it be a co-partnership or company, or by the signatures of the president and secretary of the incorporated or unincorporated association, if it be an

incorporated or unincorporated association, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation authorizing the said secretary and president to execute the same.

Sec. 5. It shall be the duty of the bank commissioner to examine the statement and documents so filed and if said bank commissioner shall deem it advisable, he shall make or have made a detailed examination, audit and investigation of such investment company's affairs and furnish a full and complete statement or report of his investigation to the charter board, providing that such investment company may at its option refuse in writing to have such investigation made, in which event the said bank commissioner shall at once reject its application. The charter board shall examine the statement or report and if said charter board shall find that such investment company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contracts contain and provide for a fair, just and equitable plan for the transaction of business, and in their judgment promises a fair return on the stocks, bonds, contracts or other securities by it offered for sale, the said charter board shall order the bank commissioner to issue to such investment company a statement entitling it to sell such securities in the state of Kansas. The bank commissioner shall thereupon issue to such investment company such statement reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the bank commissioner's office, that such investment company is permitted to sell its securities in this state, and such statement shall also recite in bold type that the bank commissioner nor the charter board in no wise recommend the securities to be offered for sale by such investment company. Such permit however shall be subject to revocation at any time by the bank commissioner, with the consent of the charter board, for cause to him and it, sufficient. But if said charter board finds that such articles of incorporation or association, charter, constitution and by-laws, plan of business or proposed contract contain any provision that is unfair, unjust, inequitable, or oppressive to any class of contributors or if the charter board decides, from the information obtained by the investigation or examination made by the bank commissioner of the affairs of such investment company that said company is not solvent, or does not promise a fair return on the stock, bonds, contract or other securities by its offered for sale, then it shall direct the bank

commissioner to not grant such company a permit as herein provided and the bank commissioner shall notify said company in writing of the decision of the said charter board; provided, however, that the bank commissioner may make special investigation and ascertain the reputation of every person, set of persons, association, company, co-partnership or corporation, who shall deal in stocks, bonds, contracts or other securities covered by this act, or who shall sell, offer or negotiate for the sale of any stocks, bonds, contracts, or other securities covered by this act in the state of Kansas, underwriting or purchasing such securities and reselling to any person or persons in the state of Kansas at a commission or profit, especially as to the class of stock, bonds, contract and other securities negotiated or sold by them. The said bank commissioner may, with the written consent of the charter board, excuse such person, set of persons, associations, company, co-partnership, or corporation from filing a copy of each security as provided in section 2 of this act, and may issue to such party or parties a special license entitling them to sell such stocks, bonds, contracts and other securities in the state of Kansas as are not objected to by the charter board, provided that such licensee shall file on the first day of each month a list of the stocks, bonds and other securities on hand for sale and sold or negotiated for sale by it during the preceding month, and provided further that the said bank commissioner with the consent of the charter board shall have authority to prohibit said licensee from selling or negotiating for sale any stocks, bonds, contracts or other securities at any time, or cancel said license at any time he decides that said licensee is not selling or dealing in such securities as he deems good legitimate investments.

Note.- The above is section 3 of Senate bill No. 485 of the session of 1913, and amends and repeals section 5 of chapter 133 of the Session Laws of 1911.

Sec. 6. It shall not be lawful for any investment company, either as principal or agent, to transact any business, in form or character similar to that set forth in section 1 of this act, except as is provided in section 2 of this act, until it shall have filed the papers and documents above provided for. No amendment of the charter, articles of incorporation, constitution and by-laws of any such investment company shall become operative until a copy of the same has been filed with the bank commissioner as provided in regard to the original filing of charters, articles of incorporation, constitution

and by-laws, nor shall it be lawful for any such investment company to transact business on any other plan than that shown in the copy of the proposed contract required to be filed by section 2 of this act, until a written statement showing in full detail the proposed new plan of transacting business and a copy of the proposed new contract shall have been filed with the bank commissioner, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the bank commissioner obtained as to making such proposed new plan of transacting business and proposed new contract.

Sec. 7. Any investment company may appoint one or more agents, but no such agent shall do any business for said investment company in this state until he shall first register with the bank commissioner as agent for such investment company, and for each of such registrations there shall be paid to the bank commissioner the sum of one dollar. Such registration shall entitle such agent to represent said investment company as its agent until the 1st of March following, unless said authority is sooner revoked by the bank commissioner; and such authority shall be subject to revocation at any time by the bank commissioner for cause appearing to him sufficient.

Sec. 8. Every investment company, domestic or foreign, shall file at the close of business on December 31st and June 30th of each year, and at such other times as required by the bank commissioner, a statement verified by the oath of the co-partnership or company, if it be a co-partnership or company, or by the oath of a duly authorized officer, if it be an incorporated or an unincorporated association, setting forth in such form as may be prescribed by the said bank commissioner, its financial condition and the amount of its assets and liabilities and furnish such other information concerning its affairs as said bank commissioner may require. Each regular statement of December 31st and June 30th shall be accompanied by a filing fee of two dollars and fifty cents. Any investment company failing to file its report at the close of business December 31st and June 30th of each year within ten days of that date, or failing to file any other or special report herein required within thirty days after receipt of request or requisition therefor, shall forfeit its right to do business in this state.

Sec. 9. The general accounts of every investment company, domestic, or foreign, doing business in this state, shall be kept by double entry, and such company, its co-partners or managing officers, shall at least once in each month make a trial balance of such accounts, which shall be recorded in a book provided for that purpose; such trial balances and all other books and accounts of such company shall at all times during business hours, except on Sundays and legal holidays, be open to the inspection

of stockholders and investors in said company or investors in the stocks, bonds, or other securities by it offered for sale and to the bank commissioner and his deputies.

Sec. 10. The bank commissioner shall have general supervision and control, as provided by this act, over any and all investment companies, domestic or foreign, doing business in this state, and all such investment companies shall be subject to examination by the bank commissioner or his duly authorized deputies at any time the bank commissioner may deem it advisable, and in the same manner as is now provided for the examination of state banks. The rights, powers and privileges of the bank commissioner in connection with such examinations shall be the same as is now provided with reference to examination of state banks; and such investment company shall pay a fee for each of such examination of not to exceed fifteen dollars for each day or fraction thereof plus the actual traveling and hotel expenses of said bank commissioner or deputy that he is absent from the capital building for the purpose of making such examinations, and the failure or refusal of any investment company to pay such fees upon the demand of the bank commissioner or deputy while making such examination shall work a forfeiture of its right to do business in this state; and provided further, that every investment company or stock broker licensed under this act shall file at the close of business December 31st, March 31st, June 30th and August 31st of each year, and such other times as required by the bank commissioner, a statement setting forth, in such form as may be prescribed by said bank commissioner, its financial condition, amount of its properties and liabilities, and such other information concerning its affairs as said bank commissioner may require. Each such statement shall be accompanied by a filing fee of two dollars and fifty cents. An investment company or stock broker failing to file its report as herein provided within ten days of the dates herein specified, or failing to file any special report within thirty days after receipt or request from the bank commissioner therefor, shall forfeit its right to do business in this state by reason thereof.

Note.- The above is section 4 of Senate bill No. 485 of the session of 1913, and amends and repeals section 10 of chapter 133 of the Session Laws of 1911.

Sec. 11. Whenever it shall appear to the bank commissioner that the assets of any investment company doing business in this state are impaired to the extent that such assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interest of its

stockholders or investors in stocks, bonds or other securities by it offered for sale, or whenever any investment company shall fail or refuse to file any papers, statements or documents required by this act, without giving satisfactory reasons therefor, said bank commissioner shall at once communicate such facts to the attorney-general who shall thereupon apply to the supreme court or to the district court where such company is located or is doing business, or to a judge of either of said courts for the appointment of a receiver to take charge of and wind up the business of such investment company, and if such fact or facts be made to appear it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as equity may require.

Sec. 12. Any person who shall knowingly or willfully subscribe to or make or cause to be made any false statements or false entry in any book of such investment company, or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of such investment company, or shall make or publish any false statement of the financial condition of such investment company, or the stocks, bonds, or other securities by it offered for sale, shall be deemed guilty of a felony and upon conviction thereof shall be fined not less than two hundred dollars nor more than ten thousand dollars, and shall be imprisoned for not less than one year nor more than ten years in the state penitentiary.

Sec. 13. Any person or persons, agent or agents who shall sell or attempt to sell the stock, bonds or other securities of any investment company, domestic or foreign, or the stock, bonds or other securities by it offered for sale, who have not complied with the provisions of this act, or any investment company, domestic or foreign, which shall do any business, or offer or attempt to do any business, except as provided in section two of this act, which shall not have complied with the provisions of this act, or any agent or agents who shall do or attempt to do any business for any investment company, domestic or foreign, in this state, which agent is not at the time duly registered and has fully complied with the provisions of this act, shall be deemed guilty of a felony and upon conviction thereof shall be fined for each offense not less than one hundred nor more than five thousand dollars or by imprisonment for not less than one year nor more than three years in the state penitentiary, or both such fine and imprisonment at the discretion of the court.

Sec. 14. All fees herein provided for shall be collected by the bank commissioner and by him shall be turned into the state treasury, and all fees so turned into the state treasury are hereby reappropriated to the bank commissioner

for the purpose of paying all salaries and expenses necessary for carrying this act into effect; and the bank commissioner is hereby authorized to appoint such clerks and deputies as are actually and absolutely necessary to carry this act into full force and effect, none of whom shall be related by blood or marriage to such bank commissioner or any of his deputies. All money actually and necessarily paid out by the bank commissioner to any clerk or deputy appointed under this act, as salaries, or any money actually and necessarily paid out by the bank commissioner, or by any clerk or deputy appointed under this act, for traveling or incidental expenses shall be paid by the state treasurer out of such fees upon the state auditor's warrants, to be issued upon sworn vouchers containing an itemized account of such salaries or expenses.

Sec. 15. Should the courts declare any section of this act unconstitutional or unauthorized by law, or in conflict with any other section or provision of this act, then such decision shall affect only the section or provision so declared to be unconstitutional, and shall not affect any other section or part of this act.

Sec. 16. That original sections 1, 2, 5, 10, and 13 of chapter 133 of the Session Laws of 1911 and all acts or parts of acts in conflict herewith are hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the official paper.

THE PRESENT "BLUE SKY" LAW OF KANSAS (1915).

"Blue Sky" Law. Passed by the Session of 1915.

Senate Bill No. 431.

An Act to prevent unfairness, imposition or fraud in the sale or disposition of certain "securities" herein defined by requiring an inspection thereof, providing for such inspection, supervision and regulation of the business of any person, association, partnership, or corporation, engaged or intending to engage, whether as principal, broker or agent, in the sale of any such securities in the state of Kansas, as may be necessary to prevent unfairness, imposition or fraud in the sale or disposition of said securities, and prescribing penalties for the violation thereof and repealing chapter 133 of the Session Laws of 1911 and chapter 141 of the Session Laws of 1913.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The term "securities" as used in this act shall be taken to mean stock certificates, shares, bonds, debentures, certificates of participation, contracts, contracts or bonds for the sale and conveyance of land on deferred payments or installment plan, or other instruments in the nature thereof whatsoever name known or called. The term "speculative securities" as used in this act shall be taken to mean and include, (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; (2) All securities for promoting the sale of which a commission of more than five per cent is offered or paid; (3) All securities into the specified par value of which the element of chance of hazard of speculative profit or possible loss equal or predominate over the elements of reasonable certainty, safety, and investment; (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; (5) The securities of any enterprise, association, partnership or corporation which has included or proposes to include in its assets as a material part thereof, patents, formulae, good-will, promotion, or intangible assets, or which has issued or proposes to issue a material part of its securities in payment for formulae, patents, good-

will, promotion or intangible assets; (6) Securities made or issued in furtherance or promotion of any enterprise or scheme for the sale of unimproved or undeveloped land on any deferred payments or installment plan when such lands are not situated in the state of Kansas and the value of such securities materially depends on the future performance of any stipulation by the promoters of such enterprise to furnish irrigation or transportation facilities, or other value enhancing utility or improvement. The term "speculative enterprise" as used in this act shall be taken to mean any business undertaking, project, venture or activity for the promotion or furtherance of which "speculative securities" as herein defined are made, issued, sold, or offered for sale.

Sec. 2. It shall be hereafter unlawful for any person, co-partnership, association, or corporation, hereinafter called the promoter, either as principal, or through brokers or agents, to sell or offer for sale or by means of any advertisements, circulars, or prospectus, or by any other form of public offering, to attempt to promote the sale of any speculative securities in this state, unless there first shall have been filed with the bank commissioner: (1) A copy of the securities so to be promoted; (2) A statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) If such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon if any; (4) A full statement of facts showing the gross and net earnings, actual or estimated, of any person or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien; (5) All knowledge or information in the possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) A copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) The names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, and no such agents shall be

employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the bank commissioner a registration fee of one dollar for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent until and including the first day of March next following; (8) The name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (9) A statement showing in detail the plan on which the business or enterprise is to be conducted; (10) The articles of co-partnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a co-partnership or unincorporated association; (11) A copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (12) A filing fee of twenty-five (\$25.00) dollars.

Sec. 3. Every foreign corporation before selling or offering for sale any speculative securities, in this state shall also file its written consent, irrevocable, that actions may be commenced against it in the proper courts of any county in this state in which a cause of action may arise, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign corporation, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees, or managers of the corporation authorizing the said secretary and president to execute the same.

Sec. 4. It shall be the duty of the bank commissioner as soon as is practical, to examine the statement and documents so filed and if said bank commissioner shall deem it advisable, he shall make, or have made, a detailed inspection, examination, audit and investigation of the affairs of the makers or guarantors, of such securities which said inspection, examination, audit, and investigation shall be at the promoter's expense. As a part of the aforesaid inspection, examination, audit and investigation, the bank commissioner may cause an appraisal to be made of the property of the maker or guarantor, in-

cluding the value of patents, formulæ, good-will, promotion, and intangible assets and shall furnish a full and complete statement or report of his inspection and investigation aforesaid to the Charter Board. The Charter Board shall, within ten days thereafter, examine the statements or report, and give the promoter a hearing if he so desires. If the Charter Board finds no legal objection to the enterprise, or securities, it shall direct the bank commissioner to note in a book to be kept for the bank commissioner for that purpose that said person, co-partnership, association or corporation has complied with section 2 of this act. But if, from the statements, papers and documents on file, and the investigations and report of the bank commissioner, or from other evidence submitted, it shall appear, and the Charter Board shall find (1) that the makers or guarantors of said securities are insolvent, in failing circumstances, or are untrustworthy; (2) or that the promoters plan of business is unfair, inequitable, dishonest, or fraudulent; (3) or that the promoters plan of business does not adequately secure investors against the unlawful dissipation or misapplication of the funds of the enterprise or business; (4) or that the promoters literature or advertising is misleading and calculated to deceive purchasers or investors; (5) or that the securities offered, or to be offered, or issued, or to be issued, in payment for property, patents, formulæ, good-will, or promotion and intangible assets in excess of the reasonable value thereof; (6) or that the enterprise or business of the promoter is unlawful or against public policy; (7) or is a mere scheme of a promoter or promoters to get rich quick at the expense of the purchasers of the aforesaid securities; the said Charter Board shall reduce its said findings to writing and attest the same by the signature of the chairman and secretary thereof. Notice of such finding, or findings, shall immediately be given to the applicant by registered mail. And it shall thereafter be unlawful for the promoter or any broker or agent of said promoter to sell, offer for sale, or by means of any advertisement, circular, or prospectus, or by any other form of public offering to attempt to promote the sale of any such speculative security or securities in this state.

Sec. 5. The Charter Board shall at any time have the authority and jurisdiction to investigate the affairs of any speculative enterprise, the securities of which are being sold or offered for sale in this state, and after giving the promoter a hearing, may if the evidence

warrant, make any of the adverse findings enumerated in section 4 of this act, and it shall thereafter be unlawful for any person, co-partnership, association or corporation to sell, offer for sale, or by means of any advertisement, circular, or prospectus or by any other forms of public offering to attempt to promote the sale of the securities of such speculative enterprise in this state.

Sec. 6. Any person, co-partnership, association or corporation being dissatisfied with any finding or findings of the Charter Board made in accordance with the provisions of this act, may within thirty days from the making thereof commence an action in any court of competent jurisdiction against said Charter Board as defendant, to vacate and set aside said finding or findings on the ground that the said findings are unjust or unreasonable. The rules of pleading and procedure in such action shall be the same as are provided by law for the trial of equitable actions in the district courts of this state and on the hearing the judge of said court may set aside, modify, or confirm said findings as the evidence and the rules of equity may require. Appeals may be taken from the decision of the district court to the supreme court by either party in the same manner as is provided by law in other civil actions. Pending any such action, the said findings of said Charter Board shall be prima facie evidence that they are just and reasonable and that the facts found are true, and pending any such action the said finding of the Charter Board shall remain in full force and effect. If no action be brought to set aside said findings within thirty days, the same shall become final and binding.

Sec. 7. No amendment of the charter, articles of incorporation, constitution or by-laws of any such corporation or the articles of association or by-laws of any unincorporated association subject to this act, shall become operative until a copy of the same has been filed with the bank commissioner as provided in regard to the original filing of charters, articles of incorporation, or association, constitution and by-laws, and it shall be unlawful for any such person, co-partnership, association, or corporation to transact business on any other plan than that set forth in the statement required to be filed by section 2 of this act, or to make, issue, sell or offer for sale any "security" or "securities" required to be filed by section 2 of this act, until a written statement showing in full detail the proposed new plan

of transacting business and a copy of the proposed new "security" or "securities" shall have been filed with the bank commissioner, in like manner as provided in regard to the original plan of business and proposed "security" or "securities".

Sec. 8. The provisions of this act shall not apply to (a) Securities of the United States; or any foreign government; or of any state or territory; or of any county, city, township, district or other public taxing sub-division of any state or territory of the United States or any foreign government. (b) Securities of public or quasi-public corporations, the issues of which are regulated by the Public Utilities Commission of the state of Kansas, or by the public service commission or board of similar authority of any state or territory of the United States; or securities senior thereto. (c) Securities of state or national banks or trust companies, mortgage companies dealing exclusively in bona fide mortgages on farm and city real estate, or building and loan associations authorized by the Charter Board to do business in this state. (d) Securities of any domestic corporation organized without capital stock, for religious, charitable or reformatory purposes.

Sec. 9. The general accounts of every person, co-partnership, association or corporation, issuing or guaranteeing any securities subject to the provisions of this act, shall be kept in a businesslike and intelligent manner and in sufficient detail so that the bank commissioner or his authorized representative can ascertain at any time the financial condition of such person, co-partnership, association or corporation, and the books of account and affairs of any such person, co-partnership, association or corporation, shall be subject to examination by the said bank commissioner or upon his direction by his assistants, accountants or examiners, at any time said bank commissioner shall deem it advisable, and in the same manner as is now provided for the examination of state banks; and such person, co-partnership, association or corporation shall pay a fee for each of such examinations, of not to exceed fifteen dollars (\$15.00) for each day or fraction thereof, plus the actual traveling and hotel expenses of said bank commissioner, assistant, accountant, or examiner, that he is absent from the capital of the state for the purpose of making such examination. And it is provided further, that every person, co-partnership, association or corporation making or guaranteeing any securities subject to the provisions of this

act, shall file at the close of business December 31st, March 31st, June 30th, and August 31st, of each year, and at such other times as may be required by the bank commissioner, a statement, certified by the oath of some person having actual knowledge of the facts therein stated, setting forth, in such form as may be prescribed by said bank commissioner the financial condition, amount of property and liabilities of such person, co-partnership, association or corporation and such other information as said bank commissioner may require. Each statement shall be accompanied by a filing fee of two dollars and fifty cents (\$2.50). It shall be unlawful for any person, partnership, association, or corporation subject to the provisions of this act, failing or refusing to comply with the provisions of this section within ten days after compliance is required, to thereafter sell or offer for sale in this state any speculative stock which said person, partnership, association or corporation is selling or offering for sale in this state.

Sec. 10. The bank commissioner shall have power upon reasonable notice either upon his own initiative or upon complaint of any responsible person, to make or have made such special inspection or investigation as he may deem necessary, in connection with the promotion, sale, disposal, or offering for sale or disposal in this state, of any certificates, shares, stocks, bonds, securities, contracts, or contracts or bonds for deeds, to determine whether the same constitute a violation of this act or any other statute of this state, by any individual, co-partnership, corporation, or association, promoting, offering, selling or pledging the same; and the state bank commissioner, his assistants or deputy shall have the power to issue subpoenas and process compelling the attendance of any person and the production of any papers or books for the purposes of such investigation and examination, and shall have power to administer an oath to any person whose testimony may be required on such examination or investigation; and any person who shall refuse to obey any such subpoena or make answer to any competent and material question propounded to him by the state bank commissioner shall upon conviction in any court of competent jurisdiction be deemed guilty of a misdemeanor, and fined in any sum not exceeding five hundred dollars (\$500.00) or be punished by confinement in the county jail for not more than ninety days, or by both such fine and imprisonment. Upon the conclusion of any such investigation, the bank commissioner may make findings

of fact touching the matter or matters under investigation and such findings shall be prima facie evidence of the truth of the matters therein found by the bank commissioner in any action, either civil or criminal, instituted under any of the laws or statutes of this state against the person, persons, partnership, corporation or association. The notice herein provided for may be given by registered letter mailed to the last known address of person or persons or corporations to be investigated and the bank commissioner's certificate shall be sufficient evidence of such notice and the mailing thereof.

Sec. 11. Any person who shall knowingly make or file or cause to be made or filed with the bank commissioner any statement, document, circular, advertisement or prospectus, required to be filed by this act, which is false in any material respect or matter, shall be deemed guilty of a felony, and on conviction in any court of competent jurisdiction punished by a fine of not less than one hundred dollars (\$100. 00) or more than five thousand dollars (\$5,000), or by imprisonment in the state penitentiary for not less than one nor more than five years, or by both such fine and imprisonment.

Sec. 12. Any person, partnership, association, or corporation who shall commit in this state any act declared unlawful by sections two, four, seven, or nine of this act, shall be deemed guilty of a felony and on conviction in any court of competent jurisdiction be punished by a fine of not less than one hundred nor more than five thousand dollars, or by confinement in the Kansas State Penitentiary for a term of not less than one nor more than seven years.

Sec. 13. This act shall not apply to the owner of any speculative security, who is not the maker or issuer thereof, who shall acquire and sell the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this act, providing that such ownership is in good faith. Repeated or successive sales of any such speculative security or securities shall be prima facie evidence that the claim of ownership is not bona fide, but is a mere shift or device to evade the provisions of this act.

Sec. 14. All fees herein provided for shall be collected by the bank commissioner and shall be turned into the state treasury, and the bank commissioner is hereby authorized to appoint a special assistant who shall have charge of the administration of this act under the direc-

tion of the said bank commissioner, and who shall receive a salary of two thousand dollars (\$2,000.00) per annum. The bank commissioner shall also have full power to employ such temporary assistants or clerks as he may from time to time deem necessary, and fix their compensation, and all salaries and expenses necessarily incurred in the administration of this act shall be paid out of fees collected and turned into the state treasury under the provisions of this act and the acts hereby repealed, upon the presentation of itemized vouchers, duly verified, and having the approval of the bank commissioner. The auditor shall issue his warrant on the state treasurer for such salaries and expenses, and the state treasurer shall pay the same out of said fees, and for that purpose the said fees are hereby appropriated for use during the fiscal years 1916 and 1917.

Sec. 15. In any case wherein the value of the securities or contracts hereinbefore enumerated are in any way dependent upon the present or proposed development of land or mines, oil or gas wells, the state board of educational administration shall, on the request of the bank commissioner, cause such investigation thereof as the bank commissioner may desire to be made by experts from the appropriate departments of the State Agricultural College or State University, or both, as the case may be.

Sec. 16. Any person who shall knowingly or willfully subscribe to, or make, or cause to be made any false statements or false entry in any book of account of any person, co-partnership, association, or corporation, subject to the provisions of this act, or exhibit any false paper with intention of deceiving any person authorized to examine into the affairs of such person, co-partnership, association, or corporation, or shall make or publish any false statement of the financial condition of any person, co-partnership, association or corporation subject to the provisions of this act or shall knowingly make any false statements materially affecting the value of the stocks, bonds, or other securities offered for sale by any such person, co-partnership, association or corporation, shall be deemed guilty of a felony and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or shall be imprisoned not less than one year nor more than ten years in the state penitentiary.

Sec. 17. Persons, partnerships, associations or corporations holding permits under the statutes hereby repealed shall be deemed to have complied with section 2 of this act.

Sec. 18. Should the courts declare any section or clause of this act unconstitutional, then such decision shall affect only the section or clause so declared to be unconstitutional, and shall not affect any other section or part of this act.

Sec. 19. Chapter 133 of the Session Laws of 1911, and chapter 141 of the Session Laws of 1913 are hereby repealed.

Sec. 20. This act shall take effect and be in force from and after its publication in the official state paper.

April 1, 1915.

Appendix III.

Proposed law as prepared by the Counsel of the Investment Bankers' Association, with the additions suggested by Mr. Richards, representing the National Association of State Bank Supervisors.

Tentative draft of proposed act.

Section 1. If any person, including a corporation or association and the officers or agents thereof, alone or in common with others, having devised or intending to devise any scheme or artifice to defraud by the issuance, sale, promotion, negotiation or distribution of any stocks, bonds, notes or other securities, shall, in or for executing such scheme or artifice or in attempting so to do, commit any overt act within the State, such person shall, upon conviction, be punishable by a fine of not more than \$-----, or by imprisonment for not more than ----- years, or by both such punishments, at the discretion of the Court. (Adapted from Federal Postal Laws, R.S., Section 5480.)

Section 2. Any dealer in securities or other person, including a corporation or association selling its own securities, and any officer or agent thereof, and any promoter or other person acting with or for it, who, as principal or agent, shall promote by advertisement or by general or public offering or through agents, the sale of any securities and shall knowingly make any representation of the existence of a fact tending to enhance the value of such securities or to induce the purchase thereof, without having knowledge of information sufficient to justify a belief in such fact, or, having knowledge of any fact adversely and materially affecting the value of any speculative securities so promoted, shall fraudulently conceal such fact in any prospectus of such securities or from any purchaser of such securities, for the purpose of inducing the purchase thereof, shall be liable in damages for the amount of any loss resulting from any such securities induced by such representation or concealment, and shall be guilty of a misdemeanor, and upon conviction thereof be pun-

ishable by a fine of not more than \$-----, or by imprisonment for not more than----- months, or by both such punishments, at the discretion of the Court.

Section 3. No person, partnership, corporation or association, hereinafter called the promoter, shall, as principal, or agent, promote by advertisement, circular, prospectus or by any other form of public or general offering, or through agents, the sale of any speculative securities in this State, except to banks, bankers, trust companies, dealers or brokers in securities, corporations, associations or partnerships, unless prior thereto there shall have been filed with the (designated State official or board):

(1) A copy of the securities so to be promoted.

(2) A statement in substantial detail of the assets and liabilities of the person or company issuing such securities and of any person or company guaranteeing the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company.

(3) If such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any.

(4) A full statement of facts showing the gross and net earnings, actual or estimated, of any person or company issuing or guaranteeing such securities, or of any property covered by any such mortgage or lien.

(5) All knowledge or information in the possession of such promoter relative to the character or value of such securities, or of the property or earning power of the person or company issuing or guaranteeing the same, including a statement that such promoter has fully investigated the same and believes the knowledge or information so stated to be reliable and true, with such exceptions, if any, as may be stated.

(6) A copy of any prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder.

(7) The names, addresses and selling territory in this State of any agents by or through whom any such securities are to be sold, and no such agents shall be employed unless such statement with respect to them has been filed hereunder.

(8) The name and address of such promoter, including the names and addresses of all partners, if the promoter be a partnership, and the names and addresses of the directors or trustees (and of any person owning ten per centum, or more, of the capital stock) if the promoter be a corporation or association.

(9) If such promoter be a non-resident of the State, a designation in writing of an attorney having an office in the State, upon whom service may be made in any action or proceeding against such promoter growing out of the sale of any such securities in this State.

(10) Filing fee of \$10.

Section 4. The term "speculative securities," as used in the preceding sections, shall include any stocks, bonds, notes or other securities which, according to the terms thereof, yield or promise to yield more than ten per centum per annum on the price at which they are offered or sold, or which are offered or sold with any representation or inducement that they will yield more than such per centum, or that they are or will be worth twice or more than twice the price at which they are offered or sold.

Section 5. Every person, firm, corporation, or association, hereinafter called the dealer, who shall, as principal or agent, promote by advertisement, circular, prospectus or by any other form of public or general offering or through agents, the sale of any securities in this State, not within the terms of Section 4 (except to banks, bankers, trust companies, dealers or brokers in securities), shall, prior to or at the time of making such promotion, notify the (official or board) of such fact, describing such securities, and file from time to time any and all prospectuses and circulars, if any, used or to be used in such promotion, and such (official or board) may make such investigation thereof and require such information or proof with respect thereto as (he) may deem necessary to determine the character of such securities and of such promotions. If (he) shall at any time determine that the element of risk and speculative profit or possible loss through fraud or otherwise predominate over the elements of safety and investment in such securities and in such promotion, (he) shall notify the dealer that such securities are speculative securities under Section 2 and 3 of this Act, and thereafter such dealer shall be subject as a promoter to the provisions of said sections with respect to such securities. If any such dealer shall mail, post-paid and properly addressed to the (official or board), a prospectus or circular containing the offering of any

such securities, with the name and address of such dealer, the same shall be deemed a notification under this section of the promotion thereof as aforesaid.

Section 6. The provisions of Section 2, 3 and 5 relative to speculative securities shall not apply to the offering or sale of any securities on any recognized exchange in this State or to the advertisement or sale thereof at public auction or pursuant to the order of any court. The listing and necessary description of any such securities, with the price thereof, in any sales list distributed or advertised by any dealer in securities shall not be deemed a prospectus thereof under Section 2, or a promotion thereof under Section 3, but the same shall be subject to the provisions of Section 5, and may by the notification of the (official or board) under said section be made subject to Section 3.

Section 7. The (official or board) shall immediately examine the papers filed under Section 3, and, if the same conform to such section, shall, within ten days after the receipt thereof, acknowledge the same, and such acknowledgment shall, as long as it remains unrevoked, be conclusive evidence of compliance with Section 3; provided, that, as to any of the papers required to be filed under sub-paragraphs (2), (3) and (4) of Section 3, the (official or board) may waive the same, or any part thereof, if (he) has on file sufficient information believed by (him) to be reliable with reference thereto, or if the promoter certifies that he is unable to obtain the same and the (official or board) finds that such information is not essential to a determination of the character of such security or of such promotion. (he) shall notify the promoter of such waiver and the reason therefor. The (official or board) shall also examine the papers filed as aforesaid, to ascertain whether or not such promotion constitutes or would constitute a violation of Section 1 or Section 2 of this Act, and (he) may at any time require such promoter to file any additional information or proof with reference to such securities or such promotion. If from the examination of such papers or of any such additional information or proof, or by reason of the failure to file any information or proof required as aforesaid, the (official or board) shall at any time determine that the promotion or sale of such securities constitutes or would constitute a violation of this Act, (he) may at any time require such promoter to file any additional information or proof with reference to such securities or such promotion. If from the examination of such papers or of any such additional information or proof, or by reason of the failure to file

any information or proof required as aforesaid, the (official or board) shall at any time determine that the promotion or sale of such securities constitutes or would constitute a violation of this Act, (he) shall notify such promoter, and any person or agent acting for or with such promoter, of such determination. (He) shall also send a copy of such notification to the district attorney of the proper county or counties, and such notification shall state that a copy thereof is being sent to such district attorney or attorneys. Such promoter or other person shall not thereafter promote or sell any of such securities, or commit any overt act in connection therewith, unless prior thereto or at the time thereof he shall notify the (official or board) and any such district attorney of such fact, and of the name and address of every person or agent making or attempting to make any sale and of every person to whom any sale is made, or attempted to be made.

Section 8. Such official or board may also make such special investigation as may be deemed necessary, in connection with the promotion of any securities under this Act, to determine whether the same constitutes or would constitute a violation of this Act by any individual, corporation or association, and such (official or board) shall have the power to issue subpoenas and process compelling the attendance of any person and the production of any papers and books for the purpose of such investigation and examination, and shall have power to administer an oath to any person whose testimony may be required on such examination or investigation.

Section 9. It shall be the duty of any such district attorney or attorneys to prosecute any violation of this Act in his county, and upon request of the (official or board) the Attorney-General shall direct and control the prosecution.

Section 10. Any person who shall knowingly make or file or cause to be made or filed any statement required hereunder which is materially false, shall, upon conviction, be subject to the punishment provided in Section 1. Any person who shall negligently make or file or cause to be made or filed any such statement which is materially false, or who, as principal or agent, shall in any other respect violate this Act, if no other provision be made therefor, shall be guilty of a misdemeanor, punishable^{as} provided in Section 2.



Appendix to statements required to be filed
with the "Blue Sky" Department in Kansas.

State of Kansas
Table I - Of Domestic Companies.

W. F. BENSON,
BANK COMMISSIONER
S. T. SEATON,
SPECIAL ASSISTANT

BANKING DEPARTMENT
TOPEKA

Administration Chapter 164, Session Laws 1915.
(Commonly called the "Blue Sky" Law.)

The Banking Department will insist that the information indicated in the accompanying blanks be given in fullest possible detail. Failure to do so will make delay for you.

This will be especially insisted upon when patents, formula, good will or intangible assets are capitalized, or stock has been, or is to be, issued therefor. This form of "watering" stock will not be tolerated, and valuations of such assets will be closely scrutinized.

When it is sought to sell land on installments or deferred payments, an abstract or satisfactory certificate of title must be filed; and the company will be required to pay the expenses and per diem of our agent if an inspection be deemed necessary.

Gas, oil, mining, irrigation and other similar enterprises must furnish satisfactory expert opinions or pay expense of investigation by the state's experts if examination of the property is deemed necessary.

A copy of the new "Blue Sky" law (Chapter 164, Session Laws of 1915) is herewith transmitted for your further advice.

W. F. BENSON,
Bank Commissioner.
S. T. SEATON,
Special Assistant.

STATEMENT TO BANK COMMISSIONER.

Compliance with section 2, chapter 164, Session Laws of Kansas, 1915.

[BLUE SKY DEPARTMENT]

Any person who shall knowingly make or file or cause to be made or filed with the bank commissioner any statement, document, circular, advertisement or prospectus, required to be filed by this act, which is false in any material respect or matter, shall be deemed guilty of a felony, and on conviction in any court of competent jurisdiction punished by a fine of not less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000), or by imprisonment in the state penitentiary for not less than one nor more than five years, or by both such fine and imprisonment. (Section 11, chapter 164, Session Laws 1915.)

To the Bank Commissioner of the State of Kansas:

	}	No.
[Name.]		
[Address.]		

Makes the following statements in compliance with section 2, chapter 164, Session Laws of the State of Kansas, 1915:

[1] The

is a corporation, incorporated under the laws of the State of

on the day of 19.....;

its authorized capital stock is \$.....

divided into shares of common and shares

of preferred stock, with a par value of \$.....

and that it has an authorized bond issue of \$.....

Attached hereto are certified copies of the charter and all existing by-laws of said corporation and marked respectively Exhibits "A" and "B."

[2] That the following is a true statement of its officers and directors and the names of all persons owning as much as ten per cent (10%) of its capital stock:

OFFICERS AND DIRECTORS.

NAME.	ADDRESS.	Number Shares and Bonds Owned.			Actual Cash Invested in Company.	Salary per Year.	Estimate Net Worth.	Time Devoted to Company.
		Com-mon.	Pre-ferred.	Bonds.				
President.....								
Vice President.....								
Secretary.....								
Treasurer.....								
General Manager.....								
Trustees and Directors.....								
1.....								
2.....								
3.....								
4.....								
5.....								
6.....								
7.....								
8.....								
9.....								
10.....								

Stockholders owning as much as 10% of stock each.

11.....
12.....
13.....
14.....
15.....

744

[8] That the following is a true statement of its profit and loss account for the _____ months prior to this date: (6 or 12)

Loss.			Profit.		
Carried to Surplus.....			Undivided Profits.....	19	
Dividends, Common Stock..... per cent.....			Gross earnings. (Specify sources).....		
Dividends, Preferred Stock..... per cent.....					
Interest paid on bonds.....					
Interest borrowed money.....					
Operating expenses.....					
Commissions.....					
Salaries.....					
Gain.....			Loss.....		
Total.....			Total.....		

[9] That attached hereto, marked Exhibit "E," is a true and complete statement of its receipts and disbursements for the past _____ months, as shown by its books. (6 or 12)

[10] Attached hereto is the consent of the _____
 _____ Company, to the commencement of actions against it and the service of process upon it in the State of Kansas by service of process on the Secretary of State of the State of Kansas as required by section 3, chapter 164 of the Session Laws of 1915.

[11] Exhibit "F" hereto attached is a true copy of the "security" which the said _____
 _____ intends to sell in the State of Kansas, which said security will be sold for the following-named price and on the following terms, and will not be sold, or offered for sale, in Kansas, at any other price or on any other terms, without the consent of the Banking Department:

[12] That the promotion expenses of the company will not exceed _____ per cent of the capital stock. (There must also be included in this statement what arrangement, if any, has been made to absorb this expense.)

[13.] That the following is the general plan upon which the company is doing and intends to do business, and the purposes for which said securities are to be sold: (Make full statement.)

Foreign Corporation.

APPLICATION

OF THE

OF

Filed this.....day of

191.....

.....
Secretary of the Charter Board.

.....by Charter Board,

this.....day of.....

191.....

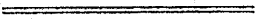
.....
State Charter Board.

RESOLUTION

BY

THE.....

..... OF



..... 191.....

At a meeting of the Directors of.....

duly held at the office of said Company, on the..... day of..... 191.....

Mr..... offered the following resolution and moved its adoption:

RESOLVED, That the President and Secretary of this..... be and they are hereby authorized and instructed to execute the written consent thereof to be sued in the State of Kansas, in the manner provided in section 3 of an act of the Legislature of the State of Kansas concerning private corporations, approved January 7, 1899.

The resolution was adopted.

State of.....

County of.....

} SS.

.....
being duly sworn, says he is secretary of the.....

..... of

and that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of said

..... on the..... day of..... 191.....

together with the minutes concerning said resolution.

.....
Secretary.

SWORN TO AND SUBSCRIBED before me, this..... day

of..... 191.....

.....
Notary Public.

My commission expires..... 191.....

Know all Men by these Presents:

That the.....

.....
a corporation organized under the laws of the State of....., and with its principal office at....., in said State, hereby consents, without power of revocation, that actions may be commenced against it, the said.....

..... in the proper court of any county in the State of Kansas in which a cause of action against such corporation may arise, or may have heretofore arisen, or in which plaintiff may reside, by service of process on the Secretary of State of the State of Kansas; and the said corporation stipulates and agrees that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the President or any other chief officer of said corporation.

IN WITNESS WHEREOF, Said corporation has caused these presents to be executed

by its President and its Secretary, and authenticated by its corporate seal,

at..... in said state of.....

this day of..... A. D. 191.....

ATTEST:

.....
President.

.....
Secretary.

BEFORE THE KANSAS STATE BANKING DEPARTMENT.

IN THE MATTER OF THE APPLICATION OF

Name. Address. No. for authority to sell its land in Kansas under the provisions of chapter 133, Session Laws of 1911, as amended.

The Company of represents to the Kansas State Bank Commissioner:

1st. That its principal business office is located at, and that it has branch offices at

2d. That it was incorporated on the day of 19, under the laws of the state of, with an authorized capital of \$, divided into shares of common and shares of preferred, with a par value of \$ each; and that it has an authorized bond issue of \$

3d. That the following is a full and correct statement of its capital stock and securities on this date:

Authorized Capital, Issued and Outstanding, Bonds authorized, Bonds issued, with sub-headers for Common Stock and Preferred Stock.

Other securities called, Authorized, Issued, . . \$

4th. That the following is a true and complete statement, showing the consideration received from the stock issued and outstanding to date:

COMMON STOCK.

Table with 4 columns: No. Shares, *Actual Value, REMARKS, and a list of items including Actual Cash, Notes, Real Estate, Plant, Equipment, Patents, Organizing, Promotion, Commissions, Salaries, Dividends, and Totals.

* This column should specify the actual amount of cash or notes received, or the actual value of real estate, etc., received in exchange for stock issued, and should correspond with value at which these different items were given in to the company and carried on the books.

DESCRIPTION OF LAND.

General surface

What is the soil—sandy loam, clay loam or clay?.....

How deep is the soil?.....

How deep is the subsoil?.....

How is the land watered?.....

Is any portion stony, gravelly, alkaline, wet, heavy, or in any other way unfit for cultivation? (State fully which and number of acres of each.).....

Does the cultivated land lie all in one body?.....

If not, in how many pieces and how located? (Show on plat.)

PLAT.

6	5	4	3	2	1
7	8	9	10	11	12
13	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

What improvements have you made since buying the land?.....

What was produced on said land in 1910?.....

1911?..... 1912?.....

Is the land now mortgaged?.....

What is the selling price per acre?.....

Attached hereto are the following papers, documents and statements:

1st. An itemized statement of its actual financial condition, and the amount of its assets and liabilities.

2d. A copy of all contracts or other securities which it proposes to make, sell or negotiate to sell to its contributors. Also abstract of title, and legal opinion on same.

3d. Sample copies of all literature or advertising matter used or to be used by such investment company in the sale of its securities.

4th. A copy of its constitution and by-laws or articles of copartnership or association.

5th. If it be an incorporated investment company it shall also file a copy of its charter; and if said company be not organized under the laws of the state of Kansas it shall be required to comply with the laws relating to the admission of foreign corporations to do business in the state of Kansas.

18th. That the following is a true statement in regard to its officers and directors:

NAME.	ADDRESS.	Actual Cash Invested in Company.	Salary per Year.	Estimate Net Worth.	Time Devoted to Company.
President.					
Vice President.					
Secretary.					
Treasurer.					
General Manager.					
TRUSTEES AND DIRECTORS.					
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

19th. That its land will be sold for the following-named prices and on the following terms, and will not be sold at any other price or on any other terms without the consent of the Banking Department:

20th. That attached hereto is a true and complete copy of each contract made, or which will be made, with any person, officer, agent or other representative of this company for the sale of its land; and that there are no agreements, understandings or contracts, either verbal, written or implied, by which anyone has received, or is to receive, any cash, land, securities or other compensation for the sale of its land, for its promotion, or for any other causes except as specified in this application and its several exhibits attached, and that all of the land of this company will be sold or disposed of for cash or its equivalent, as provided in the contracts or agreements attached, except as herein excepted.

Remarks :

Wherefore, your petitioner, in view of the showing herein made, does respectfully pray that authority be granted it to sell its land in accordance with the provisions of the above-mentioned law.

IN TESTIMONY WHEREOF, We have hereunto set our hands and affixed the official seal of this company, this the day of 191

[SEAL.] (Company.)

By President.

Attest : Secretary.

State of, County of, ss. President, and Secretary

of the Company, of of lawful age, being first duly sworn, depose and say that they have each read the foregoing application and know the contents thereof, and that the statements and allegations therein contained and attached are true.

..... President.

..... Secretary.

Subscribed and sworn to before me this the day of 191

..... Notary Public.

BEFORE THE KANSAS STATE BANKING DEPARTMENT.

IN THE MATTER OF THE CONDITION OF

(Name) } No.
(Address)

At the close of business.....

The
of

represents to the Kansas State Bank Commissioner as follows:

1st. That the following is a full and correct statement of its capital stock or other securities on the above date:

Authorized capital..... { Common stock \$.....
Preferred stock \$.....
Capital stock issued..... { Common stock \$.....
Preferred stock \$.....
Bonds authorized..... \$.....
Bonds issued..... \$.....
Other securities authorized..... \$.....
Other securities issued..... \$.....

2d. That the following is a complete and correct statement of its assets and liabilities on the above date:

ASSETS.

Table with columns for description, amount, and notes. Includes a 'Total' row at the bottom.

LIABILITIES.

Table with columns for description, amount, and notes. Includes rows for 'Common stock outstanding', 'Preferred stock outstanding', and a 'Total' row at the bottom.

BEFORE THE STATE BANKING DEPARTMENT.

QUARTERLY REPORT.

In accordance with Chapter 164, Session Laws of 1915.

(t) For Land Companies.

In the Matter of the Condition of _____
of _____, at the Close of Business
for the Quarter ending _____ 19_____

The _____
of _____, represents to the Bank Commissioner as follows:

1. The amount of land remaining unsold:

In value, \$ _____

In acres, _____

In lots, _____

2. Selling price now:

Per acre, \$ _____

Per lot, \$ _____

3. Commission paid to selling agents:

4. Amount of mortgage or other lien on property:

5. Reduction of same since last report:

6. The following arrangement is in force for protecting purchasers against mortgages or other liens and conveying unincumbered title:

7. Improvements or betterments put on land by company (state fully):

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

8. Arrangement made for upkeep and ownership of irrigation plant after land is all sold:

.....

.....

.....

.....

.....

9. Has any question been made of title to property since last report?

.....

10. Have you been involved in litigation at any time during the past year with purchasers or other persons?

Answer.....

11. If so, state nature of litigation:

.....

.....

.....

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.....

12. Attached hereto is a list of names of purchasers in Kansas since last report. (Give names and post-office address and amount of purchase.)

TABULATED FINANCIAL STATEMENT.

Authorized Capital, { Common stock, \$
 { Preferred stock, \$
 Par value per share of common stock, \$
 Par value per share of preferred stock, \$

Capital paid up, { Common stock, \$
 { Preferred stock, \$
 Market value, common stock, \$
 Market value, preferred stock, \$

RESOURCES.

Material and supplies on hand,
 Furniture and fixtures,
 Value of real estate on hand,
 Personal property,
 Stocks, bonds, or other securities,
 Judgments,
 Bills receivable,
 Cash on hand { In banks,
 { In office,
 Miscellaneous,

LIABILITIES.

Capital paid up, { Common stock,
 { Preferred stock,
 Surplus,
 Undivided profits,
 Bills payable, { Unsecured,
 { Secured by Mort. on real estate or plant,
 Bonded indebtedness,
 Miscellaneous,

PROFIT AND LOSS.

PROFIT.

Balance, undivided profits,
 Gross earnings (specifying sources),

LOSS.

Balance, if any,
 Dividends,
 Interest,
 Officers' salaries,
 Rent,
 Taxes,
 Advertising,
 Commissions,
 All other expenses (itemize),

STATE OF
County of } ss

of the
of Company,
that they have each read the foregoing stat
ements, and that the statements thereto attached are true.
.....
.....

Subscribed and sworn to before me, this day
of, 19.....

.....
Notary Public.

5-6078

My commission expires on the day of 19.....