

SECURITIES DEPARTMENT: Sale of the whole interest in a mining lease is not a certificate of interest under Sec. 7724, R.S. Mo. 1929.

October 17, 1933.



Hon. Eugene A. Farris,
Prosecuting Attorney,
Ray County,
Richmond, Missouri.

Dear Sir:

This department is in receipt of your letter of October 2, 1933, in which you request an opinion from this office as to the following state of facts:

"I desire to submit hereby a question for your official opinion. The question submitted for your opinion is as follows:

Would the sale of the whole interest to a mining, gas or oil lease be determined, under subdivision (c) of Section 7724, Chapter 40, R.S. Missouri 1929 to be a 'certificate of interest' in such lease so as to be a 'security'? Or, reversing the proposition, would not an undivided interest in such a lease instead of the whole lease be the sole and only right in such a lease to be denominated a 'security', under said subdivision of said section.

I have been asked for my official opinion upon the matter, and it is my opinion that where the whole of such a lease would be sold it would not come under the provision of said subdivision of said question so as to be determined to be a 'security'. Am I right or wrong?"

Section 7725, R.S. Mo. 1929 provides as follows:

"No person, either acting personally or through an agent, or as agent of another, shall on and after the date when this chapter goes into effect sell any security to any person in the State of Missouri contrary to the provisions of this chapter."

Section 7724, R.S. Mo. 1929, subsection (c), defines the word "security" as follows:

"The term 'security' or 'securities' shall include any note, stock, treasury stock, bond, debenture, evidence of indebtedness, transferrable certificate of interest or participation, interim certificate or receipts, certificate of interest in a profit-sharing agreement, certificate of interest in an oil, gas, or mining lease, collateral trust certificate or any transferable share, investment contract, or beneficial interest in or title to property or profits, pre-organization certificate or receipts, or any other instrument commonly known as a security."

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

A certificate of interest, therefore, is a written testimony to the truth of a right, title, share or participation in a thing.

It was the intention of the Legislature in providing for the Securities Department under Chap. 40, R.S. Mo. 1929 to regulate the sale of securities. That is, interests in projects as distinguished from an isolated sale of the whole. This intention is made apparent from a consideration of Sec. 7727, R.S. Mo. 1929, providing for transactions exempt from this chapter. Sub-section (c) of Sec. 7727, R.S. Mo. 1929 provides as follows:

"In an isolated transaction in which any security is sold, offered for sale, or delivery, by the owner thereof, or by his representative for the owner's account, such sale or offer for sale or delivery not being made in the course of repeated and successive transaction of a like character by such owner, or on his account by such representative, and such owner or representative not being the underwriter of such security."

Oct. 17, 1933.

In view of the foregoing, it is the opinion of this department that under the facts as stated in your letter, the sale of the whole interest to a mining, gas or oil lease is not such a "certificate of interest" in such lease as to be within the provisions of Sec. 7724, R.S. Mo. 1929, sub-section (c).

In connection herewith, we wish to say that the Securities Department of the State of Missouri concurs in this conclusion.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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