

## CHAPTER 80

## SECURITIES DIVISION

**80.01 DEFINITIONS.**

**HISTORY.** 1925 c. 192 s. 1; 1927 c. 66 s. 2; 1927 c. 68 s. 8; M.S. 1927 ss. 3996-1, 4000-8; 1933 c. 408 ss. 1 to 3; 1941 c. 547 s. 1.

**Subd. 2. PERSON.**

**BUSINESS TRUST AS PERSON.** See Duxbury, Business Trusts and Blue Sky Laws, 8 MLR 465.

**Subd. 3. SELL, SALE, OR SOLD.**

**MORTGAGE EXTENSION AS SALE.** The extension of a mortgage indebtedness and reduction of interest rate created a new security and amounted to a sale. 1934 OAG 690.

**STOCK SPLIT AS SALE.** It is not a sale or exchange, as used in the statute, where after a stock split the new certificate evidences the ownership of the same interest in the corporation as before. *Mertz v H. D. Hudson*, 194 M 636, 261 NW 472.

**EXCHANGE OF BONDS AS SALE.** Where outstanding bonds are exchanged for a receipt pursuant to a deposit agreement by which title is transferred, there is a sale. 1934 OAG 689.

**WHEN A MINNESOTA SALE.** Not decided whether the mere offer to sell unregistered stock in this state will taint the sale where it is consummated in another state. *Streissguth v Chase Sec. Corp.* 198 M 17, 268 NW 638.

The contract was a Minnesota contract although confirmed outside the state. *Stern v Nat. City Co. (D. Minn.)*, 110 Fed. 2d 601, 25 F. Supp. 948, reversed on another point in 312 US 666, 61 SC 823, 85 L.Ed. 726.

When a sale of stock subject to approval of the home office is made through mailed circulars and newspaper advertisements, that sale is a transaction of the state of the home office. 1918 OAG 464.

**Subd. 4. SECURITY.**

**SECURITIES INCLUDE.** The term "securities" includes all evidences of investment calling for a return in the form of income or profit. *State v Evans*, 154 M 95, 191 NW 425, 27 ALR 1165.

**MEANING OF INVESTMENT.** The common meaning of investment is the placing or laying out of money in a way intended to secure income or profit from its employment. *State v Gopher Tire & Rubber Co.* 146 M 52, 177 NW 937.

**WHAT ARE SECURITIES REQUIRING REGISTRATION.** There is no fixed rule to determine whether a security may or may not be sold without registration. *State v Gopher Tire & Rubber Co.* 146 M 52, 177 NW 937; 1938 OAG 368.

Whether registration is required depends on the character of the transaction as entered into or contemplated at the time of parting with the money. *Hanneman v Gratz*, 170 M 38, 211 NW 961.

The subsequent exchange of an undivided interest in land for stock in a corporation is not conclusive proof that the sale of stock was originally contemplated. *Busch v Noerenberg*, 202 M 290, 278 NW 34.

FORM OF TRANSACTION DOES NOT DETERMINE. The court will look to the substance and not the form of the transaction. *State v Gopher*, 146 M 52, 177 NW 937; *State v Evans*, 154 M 95, 191 NW 425; *State v Ogden*, 154 M 425, 191 NW 916; *State v Bushard*, 164 M 455, 205 NW 370; *Kerst v Nelson*, 171 M 191, 213 NW 904, 54 ALR 495; *State v Code*, 178 M 492, 227 NW 652; *State v Hofacre*, 206 M 167, 288 NW 13.

If the purchase of undivided interests in land is only incident to the right to a beneficial interest in the profits to be derived from an enterprise carried on upon the whole tract, then the sale of that undivided interest is an investment contract. *Kerst v Nelson*, 171 M 191, 213 NW 904, 54 ALR 495.

INDICIA: UNIT OWNERSHIP. Mere acquisition of unit ownership in a res proportionate to the amount contributed towards the purchase price does not constitute the transaction a sale of a security. *Hanneman v Gratz*, 170 M 38, 211 NW 961; 1934 OAG 693.

SUBSCRIPTION ISSUED TO EXISTING STOCKHOLDER. Subscriptions issued pursuant to an arrangement between a bank and its stockholders to relieve the bank of unsound assets need not be registered. The arrangement was not an investment contract within the meaning of the statute. *In re Estate of Johnson*, 189 M 331, 249 NW 670.

EXERCISE OF OPTIONS. In *State v Evans*, 154 M 95, 191 NW 425, 27 ALR 1165, the exercise of certain options provided in the contract would convert it into an investment contract.

PROFIT PARTICIPATION CONTRACT. A contract entitling the purchaser to participate in the profits from the corporation's authorized business is an investment contract. 1920 OAG 771.

WAREHOUSE RECEIPTS. Warehouse receipts in general are not securities. 1934 OAG 686. An exception: liquor warehouse receipts. See section 80.29.

For discussion of early cases, see *Brown*, A Review of The Cases on "Blue Sky" Legislation; 7 MLR 431.

#### Subd. 10. INVESTOR.

NON-RESIDENTS. The statute protects residents and non-resident investors alike. 1918 OAG 464.

#### Subd. 11. DEALER.

GRANTOR OF LAND AS DEALER. An owner of lots who "gives" with each lot sold a share of stock in a corporation owning the mineral rights in the land is a dealer. 1918 OAG 467.

The purpose of the blue sky law is to prevent fraud in the sale and disposition of securities within the state. Fraud may be waived, confirmed, or ratified. The defrauded party may either rescind the contract, or he may affirm it and recover damages sustained by him. *Zachrisson v Redemption Corp.* 200 M 383, 274 NW 536.

The parent corporation of a subsidiary foreign corporation is not doing business in the state by reason of the fact that the subsidiary is doing business in the state, where the subsidiary maintains corporate separation from and does not stand in the relation of agent to the parent. *Garber v Bancamerica*, 205 M 275, 28 NW 723.

An annuity contract, authorized by statute to be issued, and issued by a life insurance company, is not a "security" of the sort dealt with by the blue sky law. *Bates v Equitable*, 206 M 483, 288 NW 834.

Defendant, a foreign corporation, entered the state in May 1929, and transacted business until October 1931, when it withdrew and has transacted no business since. It never registered any securities, nor applied for a license to sell, nor appointed a resident agent, nor complied with the provisions of the statute relative to withdrawal from the state. The trial court properly set aside and quashed the service of the summons. *Babcock v Bancamerica*, 212 M 428, 4 NW(2d) 89.

A distribution of stock pursuant to a plan whereby the old company turned over all its assets to a new company in consideration of stock in the new company distributed pro rata to old company preferred stockholders in the nature of a liquidating dividend was within the express exemption from the blue sky law provisions, and the trial court correctly determined that no application for registration was necessary. *Devoursky v Buzza*, 215 M 282, 9 NW(2d) 767.

Suit to restrain commissioners constituting state department of commerce, securities' division, from taking further proceedings in matter of investigation of sales of common capital stock of bank stock holding company is not outside jurisdiction of federal district court as constituting suit against the state. *N.W. Bancorporation v Benson*, 6 F. Supp. 704.

Minnesota statute governing registration and sale of securities is a valid exercise of the police power. Certificates representing beneficial interests in stock of national bank and trust company required registration under Minnesota statutes governing sale of securities. *Stern v Nat'l City Co.* 25 F. Supp. 948.

In an action to recover value of securities where defendant brokers had received the securities from a converter, the burden rested on the brokers to establish that they received the securities as good-faith purchasers for value. *Thomes v Atkins*, 52 F. Supp. 405.

Sales of corporate stock in violation of the Minnesota blue sky law are illegal and void and there is an obligation raised by law on the part of the seller to refund money procured by means of such sales where only defense to right to recover on ground of violation of Minnesota blue sky law was the statute of limitations, the statute began to run on the date of sale of corporate stock involved. *City Co. v Stern*, 110 F(2d) 601, 142 F(2d) 449.

A trust company may act as a broker of securities and is eligible to make application for the issuance to it of a broker's license under the blue sky law. 1934 OAG 15, Aug. 1, 1933 (616a-3).

The additional endorsement insurance benefits contained in a policy included an option to choose a "Founder's certificate" exchangeable for stock. This was clearly a "security" and as such came within the control of the blue sky laws. 1938 OAG 369, March 19, 1937 (249a-17).

The sale and lease of certain vending machines is under the act. 1938 OAG 372, Sept. 27, 1937 (616d-26).

Right of buyer to rescind purchase of stock sold in violation of blue sky laws. 17 MLR 436.

No error in alleging in one count of an indictment six illegal sales of securities, the six sales constituting but one violation of the blue sky laws. 22 MLR 113.

### 80.02 POWERS AND DUTIES.

HISTORY. 1925 c. 426 art. 8 s. 3; M.S. 1927 s. 53-30; 1941 c. 547 s. 21.

In determining questions of law, courts may properly attach weight to decisions of certain questions by an administrative body having special competence to deal with the subject matter; and though decisions of the tax court may not be binding precedents for courts dealing with similar problems, uniform administration is promoted by conforming to them where possible. *Dobson v Commissioner*, 320 US 491.

### 80.03 DEPUTY COMMISSIONER OF SECURITIES.

HISTORY. 1925 c. 426 art. 8 s. 3; M.S. 1927 s. 53-30.

SERVICE OF PROCESS ON DEPUTY. Deputy during the absence of the commissioner is a successor in office within the meaning of section 80.14, subd. 1. *Vogel v Chase Sec. Corp.* (D.Minn.) 19 F(2d) 564.

### 80.04 REVOLVING FUND CREATED AND PERPETUATED.

HISTORY. 1917 c. 429 s. 5; 1919 c. 105 s. 6; G.S. 1923 s. 3981; 1925 c. 192 s. 28; 1927 c. 66 s. 14; M.S. 1927 ss. 3981, 3996-28.

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**EXPENSES OF APPEARANCES; LIABILITY FOR.** The commission's expenses arising from appearances before a grand jury or at a criminal trial should be paid by the county in which the proceedings are had. 1920 OAG 770.

### **80.05 SECURITIES EXEMPTED FROM OPERATION OF CERTAIN PROVISIONS OF LAW.**

**HISTORY.** 1925 c. 192 s. 2; 1927 c. 66 s. 3; M.S. 1927 s. 3996-2; 1931 c. 404; 1933 c. 408 s. 4; 1939 c. 275; 1941 c. 547 s. 2.

(1) **SECURITIES ISSUED OR GUARANTEED.** The security need not be both issued and guaranteed. 1934 OAG 694.

(2) **TRUST COMPANIES.** Trust companies are subject to the provisions of the act; it is only securities issued by them that are exempt. 1918 OAG 466.

**NATIONAL BANK'S AFFILIATE.** The exemption does not extend to a securities affiliate of a national bank even though the certificate represents a beneficial interest in both. *Stern v Nat. City Co.* (D. Minn.) 25 F(2d) 948, reversed on another point in 312 US 666, 61 SC 823, 85 L.Ed. 726.

(4) **LISTED SECURITIES; SUPERVISION OVER SALES OF SUCH.** The exemption of listed securities does not divest the commission of its supervision over the sales of such securities. *Northwest Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

**REVOCAION OR SUSPENSION OF EXEMPTION.** The exempt status of a particular listed security of a stock exchange may be suspended or revoked, and the commission in deciding whether to suspend or revoke may consider the record of recent public investigations in so far as they present a record against a particular security. But the exempt status of all listed securities of the several exchanges may not be lifted by an order based solely on such investigations. 1934 OAG 692.

(6) **NET EARNINGS; WHAT IS.** The term "net earnings" is not construed to include payment upon dissolution of a corporation of a dividend or the distribution of property among its stockholders. 1934 OAG 695.

(7) **INSURANCE POLICY CONTAINING OPTION FOR ACQUIRING STOCK.** An insurance policy requires registration as a security where it contains as an additional benefit an option clause for the acquisition of stock in the company. 1938 OAG 369.

**ANNUITY INSURANCE.** An annuity contract of insurance is not a security requiring registration. *Bates v Equitable Life*, 206 M 482, 288 NW 834.

(9) **EXCLUSIVE PURPOSE, HOW DETERMINED.** The articles of incorporation define the purpose of the cooperative; in so far as they indicate that the purpose is not exclusively one named in this section, the exemption cannot be claimed. 1934 OAG 687(688).

**SUSPENSION AND REVOCAION UNDER THIS SECTION.** Suspension or revocation by the commission must be for cause and the order should recite the fact. 1934 OAG 692.

The ultimate fact to be established is that the sale of a security tends to work a fraud, actual or constructive, on the purchaser. 1934 OAG 692.

As to securities exempted by the law. *Mertz v Hudson*, 194 M 642, 261 NW 472; *Kaiser v Butchard*, 197 M 32, 265 NW 826.

Where a hospital issued classes of stock on one of which interest was paid, and on another service or dividends, the securities were not exempt under the blue sky law. OAG Nov. 6, 1944 (616b-4).

### **80.06 SALES EXCEPTED FROM OPERATION OF LAW.**

**HISTORY.** 1925 c. 192 s. 3; 1927 c. 66 s. 4; M.S. 1927 s. 3996-3; 1933 c. 408 ss. 5, 6; 1941 c. 547 s. 3; 1943 c. 553 ss. 1, 2.

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(1) **WHAT ISOLATED SALES EXEMPT.** This exemption extends to isolated sales only when not made in the course of repeated and successive sales. 1934 OAG 691.

**WHEN IS A SALE ISOLATED.** A sale is not an isolated sale when it bears such a relation to other similar sales occurring sufficiently near the same time as to constitute one of a series of associated acts for the promotion of the same object. *State v Swenson*, 172 M 277, 215 NW 177, 54 ALR 490.

**EFFECTUATING STOCK TRANSFER IS NOT ISSUING STOCK.** Action of corporation as issuer of succeeding stock certificates to effectuate transfers of the stock from old to new owners distinguished from action of corporation as original issuer of the stock itself. *Parr v Canam Metals*, 196 M 325, 265 NW 287.

**BROKER ACTING FOR SEVERAL PRINCIPALS.** When a broker acts each time for a different principal in making successive sales of the same issue, the exemption is not lost thereby. 1934 OAG 685.

**BROKER ACTING FOR OTHER BROKER.** A member of an exchange through whom a non-member broker executes sell orders is not a representative of the owner. 1934 OAG 685.

**SUBDIVISION NOT VOID FOR INDEFINITENESS.** The provision, "made in the course of repeated and successive sales," is not void for indefiniteness. *State v Swenson*, 172 M 277, 215 NW 177, 54 ALR 490.

**INDICTMENT.** The indictment to be good must allege more than one sale. *State v Gopher Tire & Rubber Co.* 146 M 52, 177 NW 937. But that statement was limited to sales by the owner in the case of *State v Summerland*, 150 M 266, 185 NW 255, decided under Laws 1917, Chapter 429, as amended by Laws 1919, Chapter 105.

In *State v Summerland*, 155 M 395, 193 NW 699, the court said that the allegation of sales made by a dealer to persons other than the one first named in the indictment may be surplusage.

An indictment alleging a particular sale to a specifically named person and others, held to sufficiently negative an isolated transaction. *State v Ogden*, 154 M 425, 191 NW 916.

An indictment is not bad for duplicity where it charges defendant with making two or more distinct sales to specified persons and others. *State v Gopher Tire & Rubber Co.* 146 M 52, 177 NW 937.

**INDICTMENTS CHARGING SAME AND SEPARATE OFFENSES.** The fact that defendant in a criminal action is charged with the same offense in two or more indictments is not grounds for setting the indictment aside. *State v Summerland*, 155 M 395, 193 NW 699.

Each sale is a separate offense. *State v Robbins*, 185 M 202, 240 NW 456.

See section 80.25 and annotations thereunder.

Where there is a joinder in one indictment of separate counts charging different offenses of the same class and grade and subject to the same punishment, the defendant may ask the court to compel the state to elect upon which count it will rely if he would otherwise be embarrassed in making his defense. *State v Gopher Tire & Rubber Co.* 146 M 52, 177 NW 937.

In the reorganization of the Buzza Company the trial court properly held that no registration was required. *Devorsky v Buzza Co.* 215 M 282, 9 NW(2d) 767.

On Criminal Pleading see *Brown*, A Review of the Cases on "Blue Sky" Legislation, 7 MLR 431 (448).

## **80.07 SECURITIES REGISTERED BEFORE SALE; APPLICATION OR NOTICE.**

**HISTORY.** 1925 c. 192 s. 4; 1927 c. 66 s.-5; M.S. 1927 s. 3996-4; 1941 c. 547 s. 4; 1943 c. 553 s. 3.

The evidence shows that the stock of the defendant company was sold in violation of the statute. An officer of the corporation aiding in the illegal sale is

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liable to the purchaser. The action is for recovery on the ground of tort. Drees v Minn. Petroleum, 189 M 608, 250 NW 563.

Jurisdiction of respondent, a foreign corporation, was not obtained by the service of the summons herein by the sheriff's leaving copies thereof with the chief clerk of the corporation division of the secretary of state, or by his leaving copies of the summons with the deputy securities commissioner, it appearing that respondent entered the state in May, 1929, and transacted business in securities until October, 1931, when it entirely withdrew therefrom and has never since transacted any business in this state. It never registered any securities in this state nor applied for nor received license to deal in securities therein. Service of the summons was rightly quashed. Babcock v Bancamerica, 212 M 428; 4 NW2(d) 89.

Service of process on the defendant by service on the commissioner of securities was unauthorized, the registration being lawful, and that being the only act done by defendant within the state. Boyum v Mass. Trust, 215 M 485, 10 NW(2d) 379.

Where shares of a New York corporation were so inseparably combined with the shares of a New York national bank, the corporate stock was required to be registered although bank stock is immune from registration. Donaldson v Chase Securities, 216 M 269, 13 NW(2d) 1.

A sale of corporate stock that is not registered in accordance with the blue sky law is illegal and consideration paid therefor may be recovered by the purchaser in an action in tort. Shepard v City Co. 24 F. Supp. 683; Stern v Nat'l City Co. 25 F. Supp. 948.

### 80.08 REGISTRATION BY APPLICATION.

HISTORY. 1925 c. 192 s. 5; M.S. 1927 s. 3996-5; 1933 c. 408 s. 7; 1941 c. 547 s. 5.

NATURE OF THE ORDER. The order of registration is in the nature of a contract between the state and the registrants. State ex rel v Dept. of Commerce, 196 M 222, 264 NW 789.

Mere maintenance, with nothing more, by the corporation which originally issued the stock, of registrar and transfer agents, through which certain questioned sales of stock were cleared, is not enough to charge the corporation with aiding or abetting such sales. Parr v Canam Metals, 196 M 327, 265 NW 287.

In connection with the original registration it is the duty of the commission to ascertain whether fraud will result from the sale of securities. Registration should be denied if the sale may work a fraud, or if the applicant has violated any act or lawful order of the commission. Zachrison v Redemption Corp. 200 M 393, 274 NW 536.

### 80.09 REGISTRATION BY NOTIFICATION.

HISTORY. 1925 c. 192 s. 6; 1927 c. 66 s. 6; M.S. 1927 s. 3996-6; 1933 c. 408 s. 8; 1941 c. 547 s. 6.

Subd. 2 (2) SECURITIES OF BUSINESS HAVING CERTAIN QUALIFICATIONS. A newly created corporation which acquires and operates business, property, and assets of other corporations which themselves could register by notification, may not avail itself of their earning records to register its own stock by notification. It may, where a majority interest of the stock of the other companies is acquired. 1938 OAG 371.

### 80.10 TERMINATIONS; AMENDMENTS.

HISTORY. 1925 c. 192 s. 7; M.S. 1927 s. 3996-7; 1933 c. 408 s. 9; 1941 c. 547 s. 7; 1943 c. 553 s. 4.

### 80.11 POWERS REGARDING REGISTRATIONS.

HISTORY. 1925 c. 192 s. 8; 1927 c. 66 s. 6½; M.S. 1927 ss. 3996-8, 3996-31; 1931 c. 382 s. 2; 1941 c. 547 s. 8.

Subd. 1. INVESTIGATIVE. When cancellation of registration is requested by the one who procured it, there is then no outstanding registration to investigate for the purpose of determining whether it should be kept in force. State ex rel v Hardstone Brick Co. 172 M 328, 215 NW 186.

Subd. 2. REVOCATION. The commission is a quasi judicial tribunal. Its action must be based on some definite proof of the ultimate fact of fraud. 1934 OAG 692.

There must be notice and hearing, investigation and determination of facts before the commission can act to deny or revoke registration. N. W. Bancorporation v Benson (D. Minn.), 6 F(2d) 704.

The commission is bound by its own orders as to time and form of hearing. N. W. Bancorporation v Benson (D. Minn.), 6 F(2d) 704.

HEARINGS; EVIDENCE. There is no definite rule as to the nature and character of the proof. It must be relevant and fairly tend to establish the fact of fraud. 1934 OAG 692.

The commission is not limited to the strict application of rules of evidence. State ex rel v Dept. of Commerce, 174 M 200, 219 NW 81.

### Subd. 3. ANNUAL REPORTS, CANCELATION.

EFFECT OF CANCELATION. Cancellation of registration does not outlaw shares legitimized by registration when issued. Parr v Canam Metals, 196 M 325, 265 NW 287.

WHO MAY REQUEST CANCELATIONS. Where the registration order is issued for the benefit of two persons and confers rights on both, it may not be canceled at the request of one without notice to the other. State ex rel v Dept. of Commerce, 196 M 222, 264 NW 789.

A broker as such has no authority to request a cancellation of registration on behalf of the owner or issuer. State ex rel v Dept. of Commerce, 196 M 222, 264 NW 789.

The commission must show good reason for not complying with a demand for cancellation before it compels the production of books and papers for examination. The hope that a violation may be revealed is not a good reason. State ex rel v Hardstone Brick Co. 172 M 328, 215 NW 186.

## 80.12 BROKERS, DEALERS; LICENSES.

HISTORY. 1925 c. 192 s. 9; 1927 c. 665 s. 7; M.S. 1927 s. 3996-9; 1933 c. 408 s. 10; 1941 c. 547 s. 9.

### Subd. 1. APPLICATION.

LICENSE REQUIRED THOUGH SECURITIES EXEMPT. A broker is required to have a license regardless of whether the securities sold are exempt from registration or not. Kaiser v Butchart, 197 M 28, 265 NW 826.

TRUST COMPANIES; WHICH ONES ELIGIBLE. Trust companies organized under sections 48.69 to 48.75, 48.78, 48.79, 48.81, 48.82 may act as brokers and are eligible for licenses. 1934 OAG 15.

STATE BANKS; WHICH ONES ELIGIBLE. State banks without the fiduciary power granted by section 48.38 are ineligible to apply for licenses. 1934 OAG 15.

SEPARATE LICENSE FOR DEALER. Broker may not under such license operate as a dealer. 1934 OAG 683.

BAD BUSINESS REPUTE. Bad business repute is established where broker deprives customer of securities or moneys entrusted to him. Kaiser v Butchart, 197 M 28, 265 NW 826.

### Subd. 2. REVOCATION, CANCELATION.

**INVESTIGATION AND HEARING, RELATED CORPORATIONS.** Where the licensed dealer corporation is owned by the issuing corporation it is proper for the commission to draw both corporations into the proceedings for the suspension of the license. *N. W. Bancorporation v Benson* (D. Minn., 6 F(2d) 704.

As no act other than registration was done in this state, this case is distinguished from *Kaiser v Butchart*, 197 M 28, 265 NW 826, and the service of process must be set aside. *Boyum v Mass. Trust*, 215 M 489, 10 NW(2d) 379.

### 80.13 AGENTS' LICENSES.

**HISTORY.** 1925 c. 192 s. 10; 1927 c. 66 s. 8; M.S. 1927 s. 3996-10; 1933 c. 408 s. 11; 1937 c. 481 s. 2; 1941 v. 547 s. 10.

**SEPARATE LICENSES.** Agent of licensed broker cannot sell securities as agent of licensed dealer without a license therefor. 1934 OAG 684.

### 80.131 INVESTMENT ADVISERS' LICENSES.

**HISTORY.** 1941 c. 547 s. 19.

### 80.132 CHARGES OF ADVISERS.

**HISTORY.** 1941 c. 547 s. 20.

### 80.14 NON-RESIDENTS, SERVICE OF PROCESS.

**HISTORY.** 1925 c. 192 s. 11; M.S. 1927 s. 3996-11; 1933 c. 408 s. 12; 1941 c. 547 s. 11.

### Subd. 1. COMMISSIONER, AGENT FOR SERVICE OF PROCESS.

**IN WHAT ACTIONS.** The right to make service of process on the commissioner is limited to cases which arise under or are referable to some provision of the act. *Dragon Motor Car Co. v Storrow*, 165 M 95, 205 NW 694.

**FOREIGN CORPORATION, WHILE LICENSED.** Where a corporation is licensed to do business in the state, as a foreign corporation, and is authorized to carry on its business under the securities act, while it remains so licensed jurisdiction can be had over it in any suit or proceeding regardless of its character or whether it was within the state or elsewhere. *Stern v Nat. City Co.* (D. Minn.), 25 F(2d) 948, reversed on another point in 312 U.S. 666, 61 SC 823, 85 L.Ed. 726.

**FOREIGN CORPORATION, AFTER WITHDRAWAL.** Following a corporation's withdrawal from the state, the appointment of the commissioner as attorney for service is limited to actions arising out of the brokerage business which it did conduct while licensed in the state. *Streissguth v Chase Sec. Corp.* 198 M 17, 268 NW 638.

**WITHDRAWING FOREIGN CORPORATION; APPOINTMENT OF SECRETARY OF STATE FOR SERVICE DOES NOT MAKE SERVICE UNDER SECTION 80.14 IMPROPER IF OTHERWISE PROPER.**

Notwithstanding withdrawal from the state by a corporation licensed both to do business here as a foreign corporation and also under the securities act, process can be served under section 80.14 as to causes of action arising out of defendant's brokerage activities in this state. *Anderson v Chase Sec. Corp.* 193 M 443, 258 NW 743.

For comment on the jurisdictional point raised by the provision stating that the commission of an act in violation constitutes an irrevocable appointment, see 26 MLR 131 (244).

**FRAUD IN THE SALE AS CONSTITUTING A TRANSACTION.** Fraud related to the sale of securities involves a transaction under the securities act and



service may be made on the commissioner. *Vogel v Chase Sec. Corp.* (D. Minn.) 19 F(2d) 564.

But a shareholder's suit for equitable relief by the bringing of which the fraudulent practices connected with the sale are waived, does not involve a transaction covered by the act. *Zochrison v Redemption Gold Corp.* 200 M 383, 274 NW 536.

**DEPUTY AS AGENT FOR PROCESS.** For the purposes of service a deputy is the successor in office within the meaning of this section. *Vogel v Chase Sec. Corp.* (D. Minn.), 19 F(2d) 564.

**CONSTITUTIONALITY.** Constitutionality of this section upheld in *Dragon Motor Car. Co. v Storrow*, 200 M 383, 274 NW 536.

Where plaintiff's cause of action arises out of dealings with non-resident defendants and their associates as brokers in stocks, bonds, or securities, licensed under section 80.12, and such non-residents have appointed the commissioner of securities as their attorney for service, summons served thereon was good service on defendants. *Kaiser v Butchart*, 197 M 29, 265 NW 826.

A foreign corporation which has ceased doing business in the state and withdrawn therefrom except that, in obedience to statute, it has left here a continuing agent for personal service of process, is in contemplation of law continuously present here for service. The statute of limitations is not tolled by its qualified departure from the state. *Pomeroy v Nat'l City Co.* 209 M 155, 296 NW 513.

The trial court properly set aside the service of process. *Babcock v Bancamerica Corp.* 212 M 428, 4 NW(2d) 89.

The service was ineffective and should have been set aside. *Boyum v Mass. Trust*, 215 M 485, 10 NW(2d) 379.

A foreign corporation by transacting a securities business in Minnesota impliedly represented that it had complied with Minnesota statutes requiring the registration of securities, the licensing of brokers and agents, and the appointment of the chairman of the securities commission as attorney for service of process, and was submitting to the jurisdiction of the local courts. *Sivertsen v Bancamerica Corp.* 43 F. Supp. 234.

Minnesota statutes authorizing service on non-resident licensed broker by service on commissioner of securities must be construed broadly. *Thomes v Atkins*, 52 F. Supp. 405.

#### **80.15 HEARINGS BY COMMISSIONER.**

**HISTORY.** 1925 c. 192 s. 12; 1927 c. 66 s. 9; M.S. 1927 s. 3996-12.

The statute is not rendered unconstitutional for the reason that no specific provisions outline the procedure for hearings. *N.W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

The commission is bound by its own orders as to time, and it is irregular to proceed at other times without notice. *N.W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

#### **80.16 ORDERS OF COMMISSIONER; SERVICE.**

**HISTORY.** 1925 c. 192 s. 13; M.S. 1927 s. 3996-13.

#### **80.17 DEPOSITS FOR EXAMINATION; FUNDS; DISBURSEMENTS; RE-FUNDS; FIELD EXAMINATIONS.**

**HISTORY.** 1925 c. 192 s. 14; M.S. 1927 s. 3996-14; 1941 c. 547 s. 12.

**FIELD EXAMINATIONS.** Compensation of examiners, 1920 OAG 769.

#### **80.18 ADVERTISING MATTER; REGULATIONS.**

**HISTORY.** 1925 c. 192 s. 15; 1927 c. 66 s. 10; M.S. 1927 s. 3996-15; 1933 c. 408 s. 13; 1937 c. 243 s. 1; 1941 c. 547 s. 13.

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### 80.19 FALSE STATEMENTS OR MISLEADING ACTS.

HISTORY. 1925 c. 192 s. 16; M.S. 1927 s. 3996-16.

### 80.20 FEES.

HISTORY. 1925 c. 192 s. 17; M.S. 1927 s. 3996-17; 1933 c. 408 s. 14; 1937 c. 243; 1941 c. 547 s. 14; 1943 c. 553 ss. 5, 6.

### 80.21 CERTIFICATES; CERTIFIED COPIES; DUPLICATE ORDERS OR LICENSES.

HISTORY. 1925 c. 192 s. 18; M.S. 1927 s. 3996-18.

### 80.22 INVESTIGATIONS.

HISTORY. 1925 c. 192 s. 19; 1927 c. 66 s. 11; M.S. 1927 s. 3996-19; 1933 c. 408 s. 15; 1941 c. 547, s. 15.

#### Subd. 1. POWERS.

**RIGHT TO INVESTIGATE.** It is not necessary to find a specific penal provision violated to sustain the commission's right to investigate. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

The commission's right to investigate is restricted. It must have reasonable grounds for belief. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

There is a presumption against wanton action by the commission. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

**EXPIRATION OF THE PERIOD OF LIMITATIONS.** When the period of limitation expires so as to prevent prosecution the commission's duty in proceeding under this section has come to an end. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

**INVESTIGATING VIOLATIONS BEYOND THE THREE-YEAR PERIOD.** To understand transactions occurring within the three-year period it may be necessary to find the origin and beginnings at an earlier time. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

Evidence of other sales was admissible to show course of repeated and successive sales, even though some were made more than three years before. *State v Robbins*, 185 M 202, 240 NW 456, involved the question of the admissibility of that evidence at a criminal prosecution.

**POWER OVER EXEMPT SECURITIES.** The commission is not divested of its supervisory powers over certain securities by reason of their being exempt under section 80.05. *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

### 80.225 INJUNCTIONS, RECEIVERS.

HISTORY. 1927 c. 66 s. 7; M.S. 1927 s. 3996-9; 1933 c. 408 s. 10; 1941 c. 547 s. 9.

### 80.23 INFORMATION ACQUIRED; INSPECTION AND PUBLICITY; REPORTS.

HISTORY. 1925 c. 192 s. 20; M.S. 1927 s. 3996-20.

### 80.24 SEARCHES AND SEIZURES.

HISTORY. 1925 c. 192 s. 21; 1927 c. 66 s. 12; M.S. 1927 s. 3996-21; 1941 c. 547 s. 16.

IN GENERAL. 1928 OAG 133.

### 80.25 CIVIL OR CRIMINAL PROCEEDINGS; EXEMPTIONS OR EXCEPTIONS NEED NOT BE NEGATED; BURDEN OF PROOF.

HISTORY. 1925 c. 192 s. 23; M.S. 1927 s. 3996-23.

# MINNESOTA STATUTES 1945 ANNOTATIONS

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SECURITIES DIVISION 80.28

THE ISOLATED SALE EXEMPTION. *State v Summerland*, 150 M 266, 185 NW 255 (decided under Laws 1917, Chapter 429, as amended by Laws 1919, Chapter 105) stated that it cannot be held that the prosecution may allege and prove a single sale and thereby shift on to the defendant the burden of establishing that no other sales were made by him.

On negating the isolated sale in an indictment, see annotations to section 80.06 under Indictment.

## 80.26 LIMITATION OF ACTIONS; EXCEPTIONS.

HISTORY. 1925 c. 192 s. 24; M.S. 1927 s. 3996-24; 1941 c. 547 s. 18.

CAUSE OF ACTION ACCRUES WHEN. When the action to recover is based on the fact that the transaction violated the securities act the cause dates from the time the transaction was entered into. *Burzinski v Kinyon Inv. Co.* 192 M 335, 256 NW 233.

### FRAUD ACTION; WHEN CAUSE ACCRUES.

Where the action is based on fraud the statutory period begins to run when the fraud is discovered. *Stern v Nat. City Co.* (D. Minn.), 25 F(2d) 948, reversed on another point in 312 U.S. 666, 61 SC 823, 85 L.Ed. 726.

The period of limitations should be the same whether the fraud is actual or constructive. It begins with discovery. *Shepard v. City Co. of N. Y.* (D. Minn.), 24 F(2d) 682.

The court indicated in *Vogel v Chase Sec. Corp.* (D. Minn.), 19 F(2d) 564, that Mason's Minnesota Statutes of 1927, Section 9191-6, should not be extended to mere violations of the act where there has been no actual fraud, citing *Olesen v Retzlaff*, 184 M 624, 238 NW 12, 239 NW 672, 78 ALR 691. But in the *Shepard* case, supra, it is said that the limitation of the *Olesen* case should not be applied to the "Blue Sky Law."

Departure AS TOLLING THE PERIOD; FOREIGN CORPORATION WITHDRAWING FROM THE STATE. A corporation is not absent from a jurisdiction where personal service is continuously inescapable. Where service can be had under section 80.14 the tolling statute does not apply. *Pomeroy v Nat. City Co.* (1941) 209 M 155, 296 NW 513.

Under the provisions of section 80.26, a cause of action arising out of a violation of section 80.07, may be brought within one year from the effective date of section 80.26, although more than six years had elapsed since the delivery of the unregistered stock at the time of the enactment of section 80.26. *Donaldson v Chase Securities*, 216 M 269, 13 NW(2d) 1.

## 80.27 CERTIORARI FROM SUPREME COURT.

HISTORY. 1925 c. 192 s. 27; M.S. 1927 s. 3996-27.

SCOPE OF REVIEW. The supreme court can make but a limited review. The court will not interfere if the commission keeps within its jurisdiction and its action is not arbitrary or oppressive or unreasonable, or without evidence to support it. *Hardstone Brick Co. v. Dept. of Commerce*, 174 M 200, 219 NW 81.

In determining questions of law, courts may properly attach weight to decisions of certain questions by an administrative body having special competence to deal with the subject matter; and though decisions of the tax court may not be binding precedents for courts dealing with similar problems, uniform administration is promoted by conforming to them where possible. *Dobson v Commissioner*, 320 US 491.

## 80.28 APPLICATION; PENDING ACTIONS.

HISTORY. 1941 c. 547 ss. 22, 23.

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## **80.29 SALE OF LIQUOR WAREHOUSE RECEIPTS IS SALE OF SECURITIES.**

**HISTORY.** 1937 c. 145 ss. 1, 1a, 2; M. Supp. ss. 3996-36 to 3996-38; 1943 c. 645 ss. 1 to 3.

Warehouse receipts in general are not securities. 1934 OAG 686.

## **80.30 REGISTRATION OF OIL OR GAS LANDS OR INTERESTS BEFORE SALE.**

**HISTORY.** 1927 c. 68 s. 1; M.S. 1927 s. 4000-1.

Persons voluntarily associating themselves as partners, tenants in common or otherwise, in a joint venture to acquire oil leases, lands, or interests therein are not subject to the provisions of the Blue Sky Law, *Hanneman v Gratz*, 170 M 38, 211 NW 961.

Evidence sustains the conviction in an action charging defendant with the offense of offering to sell an interest in oil lands without first having been registered by the state department of commerce. *State v Golden*, 216 M 97, 12 NW(2d) 617.

Nor would the original incorporators of a corporation whose purpose it was to acquire oil lands or interests be subject to sections 80.30 to 80.37. 1938 OAG 370.

But where interests are sold to members of the public, registration before sale is required except in isolated transactions. 1938 OAG 370.

## **80.31 REGISTRATION; PROCEDURE.**

**HISTORY.** 1927 c. 68 s. 2; M.S. 1927 s. 4000-2.

## **80.32 FEES FOR REGISTRATION.**

**HISTORY.** 1927 c. 68 s. 3; M.S. 1927 s. 4000-3.

## **80.33 CERTAIN SECTIONS MADE PART OF SECTIONS 80.30 TO 80.36.**

**HISTORY.** 1927 c. 68 s. 4; M.S. 1927 s. 4000-4.

## **80.34 LICENSED BROKERS.**

**HISTORY.** 1927 c. 68 s. 5; M.S. 1927 s. 4000-5.

## **80.35 SALES EXEMPTED FROM OPERATION OF LAW.**

**HISTORY.** 1927 c. 68 s. 7; M.S. 1927 s. 4000-7; 1943 c. 646 s. 2.

## **80.36 LAWS APPLICABLE TO REGULATED TRANSACTIONS.**

**HISTORY.** 1927 c. 68 s. 9; M.S. 1927 s. 4000-9.

## **80.37 VIOLATIONS; PENALTIES.**

**HISTORY.** 1925 c. 192 s. 22; 1927 c. 68 s. 6; M.S. 1927 ss. 3996-22, 3996-29, 3996-39; 4000-6; 1933 c. 408 s. 15; 1937 c. 145 s. 3; 1941 c. 547 s. 17; 1943 c. 543 s. 7; 1943 c. 645 s. 4; 1943 c. 646 s. 1.

Subd. 1. **FORMER JEOPARDY AS A DEFENSE.** Each sale is a separate offense and therefore former jeopardy as to another earlier sale is not a good defense. And evidence of such other sales is admissible to show a course of repeated and successive sales. *State v Robbins*, 185 M 202, 240 NW 456.

## **GENERAL ANNOTATIONS AS TO CHAPTER**

**NATURE OF THE SALE.** The sale of stock in violation of the act is illegal. *Drees v Minn. Petroleum Co.* 189 M 608, 250 NW 563. But the purchaser does not

violate the statute and hence may apply to the courts for relief. *Edson v O'Connell*, 190 M 444, 252 NW 217.

The sale is voidable as to the purchaser. *Edson v O'Connell*, 190 M 444, 252 NW 217.

Other cases state that the sale is void as to the purchaser, *Drees v Minn. Petroleum Co.* 189 M 608, 250 NW 563; *Stern v Nat. City Co.* (D. Minn.), 25 F(2d) 948, affirmed in 110 F(2d) 601, reversed on another point in 312 U.S. 666, 61 SC 823, 85 L.Ed. 726.

**RESCISSION.** Whether void or voidable, it is clear that in an action between the original parties to recover the consideration, the purchaser need make no rescission or tender before suit. *Stern v Nat. City Co.* 25 F(2d) 948; *Vercellini v U.S.I. Realty Co.* 158 M 72, 196 NW 672; *Edson v O'Connell*, 190 M 444, 252 NW 217; *Shepard v City Co. of New York* (D. Minn.), 24 F(2d) 682.

The bringing of the suit is a sufficient disaffirmance where the purchaser receives no tangible property of the corporation. *Drees v Minn. Petroleum Co.* 189 M 608, 250 NW 563.

**INTERVENING RIGHTS OF THIRD PERSONS.** Where the rights of creditors intervene the purchaser cannot rescind or recover the price paid. *Edson v O'Connell*, 190 M 444, 252 NW 217.

Where the rights of third parties intervene there may be an estoppel against the purchaser. *Stern v Nat. City Co.* 25 F(2d) 948.

That his stock was bought in violation of the act held not to be a good defense against an assessment on a stockholder's constitutional liability. *Parker v Merritt*, 164 M 305, 204 NW 941. And the issuance of a certificate of stock to the purchaser was not necessary to establish his assessment liability. *Marin v Olson*, 181 M 327, 232 NW 523.

On rights of the purchaser of securities sold without a license see *Brown*, A Review of the Cases on Blue Sky Legislation; 7 MLR 431 (451); 17 M.L.R. 436.

**THE PURCHASER'S REMEDIES.** The aggrieved purchaser may base his cause of action solely on the illegality of the contract and recover by merely establishing the violation of the statute. *Vogel v Chase Sec. Corp.* (D. Minn.), 19 F(2d) 564.

**THE ACTION IS IN TORT.** In *Shepard v City Co. of N. Y.* (D. Minn.), 24 F(2d) 682, the court states the Minnesota rule to be that the action is in tort the basis of which is fraud.

The purchaser in *Drees v Minn. Petroleum Co.* 189 M 608, 250 NW 563, sued in tort for conversion and was allowed recovery on that theory.

In *Webster v U. S. I. Realty Co.* 170 M 360, 196 NW 672, the defendants were liable to the purchaser quasi contractually.

**WHERE PLAINTIFF RELIES ON FRAUD CONNECTED WITH THE SALE.** Or the purchaser may base his cause of action on fraud rather than on illegality of the contract and bring an action thereon in law for damages or in equity to rescind. *Vogel v Chase Sec. Corp.* 19 F(2d) 564.

**FRAUD; IMPLIED MISREPRESENTATION.** In the *Vogel* case, supra, plaintiff alleged affirmative misrepresentations inducing the sale. The court said such constituted active fraud and involved a transaction within the meaning of the securities act. The facts of the *Shepard* case, supra, involved no express representations but only a violation of the act. The court implied fraud from the circumstances of the sale saying that the failure to divulge the fact of non-registration in the sale of stock is fraud, the good faith of the seller being immaterial.

The court in *Stern v Nat. City Co.* 25 F(2d) 948, affirmed in 110 F(2d) 601, reversed on another point in 312 U.S. 666, 61 SC 823, 85 L.Ed. 726, while affirming this extension of the doctrine of implied fraud to include mere statutory violations added that the failure to disclose the fact of non-registration amounted to actual fraud as distinguished from constructive fraud.

On what constitutes fraud in the sale of securities, see *Brown*, A Review of the Cases on Blue Sky Legislation; 7 MLR 431 (450).

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**RATIFICATION OF FRAUD IN THE SALE.** Where plaintiff by virtue of his stock ownership seeks equitable relief from the misconduct of the corporation's officers, he thereby waives any fraudulent practices connected with the sale. *Zochrison v Redemption Gold Corp.* 200 M 383, 274 NW 536.

**CIVIL LIABILITY FOR AIDING SALES IN VIOLATION OF THE ACT.** An officer of a corporation who aids in an illegal sale of unregistered stock is liable to the purchaser. *Drees v Minn. Petroleum Co.* 189 M 608, 250 NW 563; *Parr v Canam Metals*, 196 M 32, 265 NW 287.

One who lends money to buy stock sold in violation of the act cannot be held to have aided in the violation because it is not the purchase which is forbade. *Edson v O'Connell*, 190 M 444, 252 NW 217.

Mere maintenance by the issuing corporation of registrar and transfer agents is not sufficient to found liability. *Parr v Canam Metals*, 196 M 325, 265 NW 287.

**CONSTITUTIONALITY.** Cases upholding the constitutionality of Blue Sky legislation in general. *Hall v Geiger-Jones Co.* 242 US 539, 37 SC 217, 61 L.Ed. 480, LRA 1917 F 514, Ann. Cas. 1917 c. 643; *Caldwell v Sioux Falls S. Y. Co.* 242 U.S. 559, 37 SC 224, 61 L.Ed. 493; *Merrick v Halsey & Co.* 242 U.S. 568, 37 SC 227, 61 L.Ed. 498.

For discussion of early cases on constitutionality, see *Brown*, *The Minnesota Blue Sky Law*; 3 MLR 149.

Minnesota Blue Sky legislation upheld in *State v Nordstrom*, 169 M 214, 210 NW 1001. See *N. W. Bancorporation v Benson* (D. Minn.), 6 F(2d) 704.

## STATUTORY CONSTRUCTION.

**NARROW CONSTRUCTION.** The statute is highly penal and therefore must be strictly construed. *Gutterson v Pearson*, 152 M 482, 189 NW 458, 24 ALR 519.

**BROAD CONSTRUCTION.** The act has a paternalistic character and should not be narrowly construed. *Kerst v Nelson*, 171 M 191, 213 NW 904, 54 ALR 495; *State v Hofacre*, 206 M 167, 288 NW 13.

The act should be broadly construed for the purpose of the legislature was to bring within the statute the sale of all securities not specifically exempted. *State v Gopher Tire & Rubber Co.* 146 M 54, 177 NW 937.