

## CHAPTER 86

## SECURITIES DIVISION

NOTE: The state securities commission, consisting of the public examiner, attorney general or his deputy, and the commissioner of insurance, was created by L. 1917, c. 429; L. 1919, c. 105, made the superintendent of banks a member of the commission in place of the commissioner of insurance, and added enforcement provisions; L. 1921, c. 426, provided for the appointment of three commissioners appointed by the governor.

L. 1925, c. 192, entirely revised the law, superseding L. 1917, c. 429, as amended.

By L. 1925, c. 426, art. 8, s. 3, the duties of the commission were transferred to a single commissioner appointed by the governor. The commissioner is ex-officio a member of the department of commerce.

The provisions of this chapter are not violative of Minnesota Constitution, Article 1, Section 7, nor of the Fourteenth amendment to the federal constitution. It is a valid exercise of the police power. *State v Nordstrom*, 169 M 214, 210 NW 1001; *Kerst v Nelson*, 171 M 191, 213 NW 904; *State v Swanson*, 172 M 277, 215 NW 177.

Construed liberally: *Kerst v Nelson*, 171 M 191, 213 NW 904; *Streissguth v Chase*, 198 M 17, 268 NW 638; *State v Golden*, 216 M 97, 12 NW(2d) 617; *State v Lorentz* 221 M 336, 22 NW(2d) 313; *Sivertsen v Bancamerica-Blair*, 43 F. Supp. 233.

Applicability of act to single sales. 7 MLR 61.

Review of cases on "blue sky" legislation. 7 MLR 431.

**80.01 DEFINITIONS.****Subdivision 1. WORDS, TERMS, AND PHRASES.**

Minnesota "Blue Sky" law. 3 MLR 149.

Business trusts and blue sky laws. 8 MLR 465.

Revision of British company law. 30 MLR 585.

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

Fraud may be waived, confirmed, or ratified. Where actionable fraud has been practiced, the defrauded party may either rescind the contract, or he may affirm it, and recover damages. It is his duty on discovery of the fraud to elect. *Zochrison v Redemption Gold Corp.*, 200 M 383, 274 NW 536.

In an action to recover money paid for stock sold in violation of the blue sky law, the findings of the trial court that the money paid by plaintiff was for an interest in land and buildings to be erected thereon, and not for stock in a corporation, is sustained by the evidence. *Busch v Noerenberg*, 202 M 290, 278 NW 34.

Where shares of the stock of a New York corporation organized for the purpose of dealing in securities were so inseparably combined and consolidated with the shares of a New York bank that the shares of neither could be sold or transferred without a like number of shares of the other, the corporate stock was required to be registered before it could be lawfully sold in the state. *Donaldson v Chase Securities*, 216 M 269, 13 NW(2d) 1.

Defendant was properly convicted of the offense of selling unregistered securities where, in the course of repeated and successive sales, he sold, by means of contracts for deed, and deeds which were not registered, burial lots for speculative purposes. *State v Lorentz*, 221 M 367, 22 NW(2d) 313.

The state securities commission has authority to exercise jurisdiction over a licensed broker in enjoining him from being a party to fraud in the disposition of securities; and service on non-resident licensed broker by service on the commissioner must be construed broadly. The transaction was a "gambling transaction." *Thomes v Atkins*, 52 F. Supp. 405.

Allocation for tax purposes of losses on sale of stock and on recovery by the purchaser through the courts from the seller of the stock where there had not been compliance with Minnesota Blue Sky law. *Dobson v Commissioner*, 320 US 489; *Chase v Donaldson*, 325 US 304.

#### Subd. 4. SECURITY.

The purpose of the blue sky law is to prevent offering to the public all kinds and forms of securities and investment contracts unless and until the state agency can investigate and determine whether sound policy justifies granting permission to sell the security so offered. *State v Hofacre*, 206 M 167, 288 NW 13.

An annuity contract, authorized by statute to be issued, and issued by a life insurance company, is not a security subject to the powers of the commissioner of securities. *Bates v Equitable Life*, 206 M 482, 288 NW 834.

Contract for deed as security. 31 MLR 203.

#### Subd. 6. ISSUER.

An action to recover money paid for stock sold without having first been registered is in tort, whether the fraud is actual or constructive, and in each case the period of limitation is six years from discovery of the fraud. *Shepard v City Company*, 24 F. Supp. 682.

#### Subd. 13. APPLICATION OF DEFINITIONS.

Following decisions under the original "Blue Sky Law" defendant was properly convicted because he sold interests in oil lands without reservation. *State v Golden*, 216 M 97, 12 NW(2d) 617.

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

(1) Problem of tax-exempt securities. 8 MLR 272.

Where cemetery lots are sold for an investment but by the device of contracts and deeds, the sale is one of "securities" or "investment contracts" under the law. *State v Lorentz*, 221 M 366, 22 NW(2d) 313.

Authority to issue railway bonds. 6 MLR 63.

Business trusts and "blue sky laws." 8 MLR 465.

### 80.06 SALES EXCEPTED FROM OPERATION OF LAW.

It has been held that associations to purchase lands are not within control of the act. *Busch v Noerenberg*, 202 M 290, 278 NW 34; *State v Golden*, 216 M 97, 12 NW(2d) 617.

A distribution of stock pursuant to a plan for reorganization whereby the old company turned over all its assets to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was a distribution in the nature of a liquidating dividend within the express exemption of the blue sky law, and no application for registration was necessary. *Dworsky v Buzza*, 215 M 282, 9 NW(2d) 767.

Where a broker renders service in procuring a purchaser under such circumstances as to show that he expects to be paid for them as a matter of right and the person for whom they are rendered does nothing to disabuse him of his expectation, but permits him to render the services, the broker is entitled to recover

# MINNESOTA STATUTES 1947 ANNOTATIONS

## 80.07 SECURITIES DIVISION

268

in quasi contract for the benefits thereby received by the party for whom the services were rendered. Schimmelpfenning v Gaedke, 224 M —, 27 NW(2d) 418.

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

Parties aggrieved are bound by their selection of remedies, and where stockholders sought equitable relief, including accounting, they waived any remedies they might have under this chapter. Zochrison v Redemption Gold Corp., 200 M 383, 274 NW 536.

In the reorganization of the Buzza Company the trial court properly held no registration was required in exchange of old stock for new. Dworsky v Buzza, 215 M 282, 9 NW(2d) 767.

Certain bank stock immune from registration was within the provisions of the act when sold in connection with other companion stock not immune. Donaldson v Chase Securities, 216 M 269, 13 NW(2d) 1; Pomeroy v Nat'l City, 216 M 278, 13 NW(2d) 6.

In an action by Amundson and others acting as the department of commerce against Cloverleaf Memorial Park Association to impound assets and protect creditors and lot owners, the trial court properly allowed the final account of the receiver and ordered proper disposition of the assets. Amundson v Cloverleaf Association, 221 M 353, 22 NW(2d) 171.

Defendant was properly convicted of the offense of selling unregistered securities where, in the course of repeated and successive sales, he sold, by means of contracts for deed and deeds which were not registered, burial lots for speculative purposes. State v Lorentz, 221 M 366, 22 NW(2d) 313.

Where cemetery lots are sold for an investment through the device of contracts or deeds, the sale is one of "securities" and "investment contracts" and within the provisions of the act. State v Lorentz, 221 M 366, 22 NW(2d) 313.

### 80.08 REGISTRATION BY APPLICATION.

Registration denied. State ex rel v Dept. of Commerce, 174 M 200, 219 NW 81; State ex rel v Dept. of Commerce, 178 M 623, 228 NW 162.

### 80.09 REGISTRATION BY NOTIFICATION.

Right of infant, where salesman misrepresented the kind of property, to rescind the contract. Gislason v Doherty Co., 194 M 476, 260 NW 883.

### 80.12 BROKERS, DEALERS; LICENSES.

#### Subd. 2. REVOCATION, CANCELATION.

Ten year installment savings certificate promising the purchaser at the end of ten years a sum equivalent to the amount paid in, plus six per cent, was not illegal because the company's profit came partially from lapses by members. Such certificate sales did not "work a fraud upon the purchaser." Re Investor's Syndicate, 147 M 217, 179 NW 1001.

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

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

Absent consent, state courts may exercise jurisdiction over a foreign corporation if it is doing business in the state at the time of the service of the summons, but not after it has ceased doing business and withdrawn from the state. Garber v Bancamerica-Blair Corp., 205 M 275, 285 NW 723.

### 80.19 FALSE STATEMENTS OR MISLEADING ACTS.

Measure of damages in action for fraud in the sale of corporate securities. 23 MLR 205.

**80.25 CIVIL OR CRIMINAL PROCEEDINGS; EXEMPTIONS OR EXCEPTIONS NEED NOT BE NEGATIVED; BURDEN OF PROOF.**

Evidence of other sales of fur contracts by a muskrat farm is admissible for the purpose of showing that the sale upon which conviction was sought and obtained was made in the course of successive and repeated sales of like contracts. *State v Robbins*, 185 M 202, 240 NW 456.

**80.26 LIMITATION OF ACTIONS; EXCEPTIONS.**

Upon the record of this suit to recover the purchase price of securities sold in violation of the Minnesota Blue Sky Laws and on misrepresentations, the defendant's immunity from suit cannot be said to have been finally adjudicated by the state courts prior to the legislature's enactment of an act which operated to abolish any defense the defendant may have had under the statute of limitations, and the act did not deprive the defendant of property without due process of law in violation of the Fourteenth Amendment. *Chase v Donaldson*, 325 US 304.

**80.27 CERTIORARI FROM SUPREME COURT.**

Review by certiorari. *State v State Securities Commission*, 145 M 221, 176 NW 759; *Saari v State Securities Commission*, 149 M 101, 182 NW 910; *State v Department*, 174 M 200, 219 NW 85; *State v Department*, 178 M 623, 228 NW 162.

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

L. 1925, c. 192, the "blue sky law," is not unconstitutional within the provisions of the federal constitution as class legislation, or as interfering with the right of contract. *State v Nordstrom*, 169 M 214, 210 NW 1001.

**80.36 LAWS APPLICABLE TO REGULATED TRANSACTIONS.**

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

**80.37 VIOLATIONS; PENALTIES.**

Where cemetery lots are sold as an investment by the device of contracts and deeds, the sale is one of "securities" or "investment contracts" under the provisions of chapter 80. *State v Lorentz*, 221 M 366, 22 NW(2d) 313.