



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

April 19, 1955

Honorable Allan Shivers  
Governor of Texas  
Capitol Station  
Austin, Texas

Letter Opinion No. MS-200

Re: Constitutionality of  
Senate Bill 149, 54th  
Legislature, being the  
Securities Act. 121

Dear Governor Shivers:

Your request for an opinion of this office reads, in part, as follows:

"I would appreciate it very much if your office would furnish me with an opinion as to the constitutionality of Sections 8 and 24, as well as your advice as to whether any degree of control may be exercised over transactions or securities which are exempt under Sections 3 or 4 if the sale is made in a manner that would be fraudulent."

Your first two questions as to the constitutionality of Sections 8 and 24, as they relate to the delegation of legislative or judicial power and due process, are fully discussed and briefed in the application for writ of error filed and now pending in the Supreme Court of Texas in the case styled Howard Carney, Secretary of State, et al., v. Sam Houston Underwriters, et al., No. \_\_\_\_\_. The Court of Civil Appeals did not pass upon the question. A copy of the brief in that case is attached, and the questions you asked are discussed at pages 24-53, both pages inclusive. There are no material changes between Sections 8 and 24 of Article 600(a), Vernon's Civil Statutes, and those sections as found in Senate Bill 149.

Your second question is determined by the provisions of Sections 24 and 33 of Senate Bill 149. Section 24 provides for the issuance of a summary cease and desist order with the right of appeal to a district court in Travis County (Section 28). The order, if issued, is directed against a dealer, agent, or salesman (those classes are defined by Section 2, subdivisions c and d), and may be issued if found that the further

sale of the securities "would tend to work a fraud on any purchaser thereof."

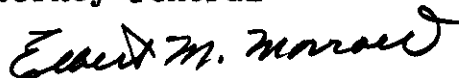
In addition to this summary action, the Secretary of State may, if it appears that the "issuance, sale, promotion, negotiation, advertisement or distribution of securities . . . including any security embraced in the subsection of Section 4, and including any transaction exempted under the provisions of Section 3, any person or company shall have employed or employs, or is about to employ any device, scheme, or artifice to defraud . . . or shall have engaged in or is about to engage in any practice or transaction or course of business relating to the purchase or sale of securities . . . which is fraudulent or which has operated or which would operate as a fraud upon the purchaser . . .", refer the transaction to the Attorney General who, upon evidence satisfactory to him, may bring an injunction suit in the name of the State of Texas. Fraud and fraudulent practices are defined by Sections 2(f) and 33.

You are, therefore, advised that by the very language of the Act the exemptions in Sections 3 and 4 of the proposed Act are qualified exemptions and do not serve as a license to commit fraud.

Very truly yours,

JOHN BEN SHEPPERD  
Attorney General

By



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EMM-s

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