

Opinion No. [29-12]

July 27, 1929

TO: Office of the Attorney General of New Mexico

COMMON LAW TRUSTS -- Must comply with Blue Sky Law.

OPINION

Your letter of the 24th inst., with which you enclose a letter from Denver, Colo., and request an opinion from this office "as to whether or not common law trusts organized to do a general business have entity in New Mexico", is at hand.

In view of the letter which you enclose and the connection in which this comes up I assume that you ask the question with particular reference to our Blue Sky Law, as found in chapter 44 of the Session Laws of 1921, from a reading of which it becomes apparent that common law trusts are trusteehips, in selling or offering for sale, either as principal or through brokers, any speculative securities in this state, are classed with persons, copartnerships, associations and corporations, indiscriminately.

Inasmuch as you are familiar with this act and as well have ready access to it, it is unnecessary to quote at length the statutory definition of speculative securities as found in the act, such definition being found in section 1, page 92, Laws of 1921. A reading of that section discloses that speculative securities are in nowise limited to the handling, management and conserving of estates.

Speculative securities having nothing to do with estates may be offered for sale under the provisions of the Blue Sky Law in this state by a common law trust upon complying with the requirements of the statute, just the same as an individual, a partnership, association or a corporation.

It at times becomes a very close question as to whether an association of individuals under specific agreement is a partnership, a common law trust or a joint stock company. The test is not as to what the contract may declare such association to be. Its character is to be determined from the provisions of the declaration and the powers which it confers rather than a statement therein as to what they intended to do. For your purposes, however, in the performance of your duties under the Blue Sky Law, it is probably not essential that you determine, since by section 2 of that act each and all are required to file with you information from which you may determine the business standing, the integrity, the probabilities of fair dealing with the public and as well information from which you may determine the advisability of permitting the sale of such securities in this state, having in mind the protection of investors.

I am tempted to extend this in a discussion of the powers of common law trusts in view of questions raised by the letter transmitted with yours. I realize, however, that such

discussion is aside from the question you have specifically asked and inasmuch as that question has been answered in the affirmative I shall refrain from further discussion. If, however, you should be interested in an enlightening and interesting discussion you may enjoy reading the case, *McCamey v. Hollister Oil Co.*, 241 S. W. 689.

We are returning herewith the letter transmitted.