

OPINION
46-54

March 22, 1946 (OPINION)

CORPORATIONS

RE: Stock Increase - Securities Commission

This office acknowledges receipt of your letter of March 20 relative to the Midwest Motor Express, Inc., which is about to increase its capital stock from one hundred thousand dollars to three hundred thousand dollars.

Your inquiry is as to whether, in the opinion of this office, this corporation must secure approval of the Securities Commission before it can sell the stock to be issued under the increased capital.

You state that in the case of this corporation, no public offering will be made and the stock will not be offered to the public generally. There are two or three men who want to invest some money in the enterprise and the directors do not contemplate offering the stock to the public generally.

Subdivision I of section 10-0402, of the North Dakota Revised Code of 1943, which enumerates the securities which must pass inspection of the Securities Commission, reads as follows:

"Stock certificates, shares, bonds, debentures, certificates of participation, service contracts, preorganization certificates and subscriptions, and agreements to incorporate or mutual incorporation contracts involving more than twenty-five proposed incorporators."

Section 10-0403 enumerates securities exempted from the provisions of this chapter, but it is clear that stock issued by the corporation in question does not come within the exemption.

Section 10-0405 provides that, "It shall be unlawful for any person, copartnership, association, or corporation to sell, or to offer for sale,***."

The language in the statutes quoted seems to be specific and leaves no doubt as to construction. The Midwest Motor Express, Inc., is a corporation. It expects to increase its capital by two hundred thousand dollars. It expects to sell this stock. Under the language of the statutes, it appears to be immaterial whether they sell the stock to one or to several persons because section 10-0405 provides specifically that, "It shall be unlawful for any * * * corporation to sell,

The facts, as I gather them from your letter and from statements made by Mr. Goplen, are that this corporation expects to issue two hundred thousand dollars worth of additional stock and it expects someone to buy the same. The stock will therefore be sold whether it is sold to the present stockholders or to other persons, and it seems clear, therefore, that under the language of the statutes quoted the

corporation must secure the approval of the Securities Commission before such stock can be sold.

NELS G. JOHNSON

Attorney General