

HB

786

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

January 26, 1978

Honorable C. V. "Chat" Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Chatterton:

Re: Private Offering Exemption 45.55.140(b)(5)
Definition of Issuer 45.55.130(7)(B)

PROBLEM

In the recently changed private offering exemption, certain oil, gas and mining programs were excluded from using this exemption because of a "peculiarity" in the definition of an "issuer," AS 45.55.130(7)(B), which states that there is no issuer in certain oil, gas and mining securities.

The intent of the private offering exemption legislation was not to exclude these groups from having the availability of the exemption but rather to have it apply to all types of private offerings.

PROPOSED SOLUTION

The problem lies not in the wording of AS 45.55.140(b) but in the archaic definition of an "issuer" as found in AS 45.55.130(7)(B) and, specifically, that part which states:

"(B) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under these titles or leases, there is not considered to be an "issuer";"

This clause was contained in the original enactment of the Alaska Securities Act of 1959 (406 ch. 198 SLA 1959) and was taken verbatim from the Uniform Securities Act as approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in August of 1956. The original drafter saw a possible problem with this language but felt that it could be dealt with under the rulemaking authority of the Administrator (see Official Code Comment. I CCH Blue Sky Law Reporter, 4931).

January 26, 1978

The Draftmen's Commentary to this problem states "...the existing statutes seem to have ignored the problem of determining who is the issuer of such a security." After several futile attempts to draft a definition of "issuer" as applied to this type of "security," it was concluded that the simplest solution was to say that there is no "issuer" at all. Loss and Cowett, Blue Sky Law, 1958 Ed, 341.

What resulted because of the begging of this question in the original Uniform Securities Act was that many states, and now even Alaska, have been faced with problems of dealing with issuers who are statutorily "non-issuers." As a result, 35 states have changed this definition so that there is now considered to be an issuer in these oil, gas and mining programs. Only 15 states, including Alaska, have failed to remedy this problem.

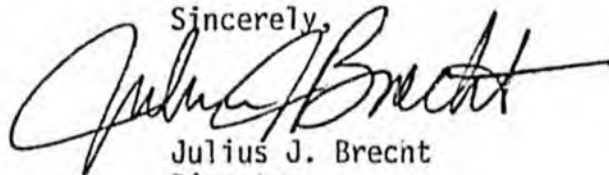
It is interesting to note that Alaska is the only Pacific Northwest state to keep the old definition. The only other west coast state to maintain it is Hawaii.

RECOMMENDATION

I am attaching hereto, for your consideration, a proposed amendment to AS 45.55.130(7)(B) which conforms to the definition now adopted by a majority of states. This amendment will solve the problem by defining issuer in certain oil, gas and mining programs and bring our uniform act into uniformity.

I appreciate the opportunity to express the division's views on this problem and remain at your disposal should you have any questions concerning this recommendation or proposed action on it.

Sincerely,



Julius J. Brecht
Director

JJB/va14/3

cc: Lum Lovely
Alaska Miners Association
Alaska Geological Society
Alaska Association of Petroleum Landmen
Alaska Oil and Gas Association

AS 45.55.130(7)(B) is amended as follows:

- (B) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale. [WITH RESPECT TO CERTIFICATES OF INTEREST OR PARTICIPATION IN OIL, GAS, OR MINING TITLES, OR LEASES OR IN PAYMENTS OUT OF PRODUCTION UNDER THESE TITLES OR LEASES THERE IS NOT CONSIDERED TO BE ANY "ISSUER";]

March 28, 1978

Mr. Richard D. Latham, Commissioner
Texas Board of Securities
P.O. Box 131 Capitol Station
Austin, Texas 78711

Dear Mr. Latham:

Re: Oil & Gas Exemption Questionnaire

Thank you for your memoandum of March 10, 1978 on a proposed oil and gas exemption. I appreciate the opportunity to comment on this important proposal. Although we have attempted to respond to each of the questions posed, there are some areas where the problems or implications are not entirely clear. I suspect I am not alone in this regard, and I look forward to some enlightenment in Washington at the spring meeting.

To preface my response, I feel that some type of exemption is in order, but the type of exemption has a great bearing on the standards that should apply. If the exemption is to be available to "sophisticated investors" meaning those with experience and knowledge in the industry then there probably should be fewer restrictions. On the other hand, if wealth is the criteria or the exemption takes the form of a "private offering" exemption, then other more stringent standards should apply.

I would also like to point out that the Alaska Securities Act (ASA) already defines oil and gas interests, as well as mining interests as securities and that ASA already provides a private offering exemption under which certain of these securities may be offered.

In addition, the Alaska Legislature is presently considering a further exemption for oil, gas and mining securities for those "in the business." I have included below excerpts from the Alaska Statutes as well as the proposed legislation in hopes that these responses to the questions posed may be seen in better context. Please note that the division is experiencing some minor problems with present private offering exemption (AS 45.55.140(b)(5)) and will attempt to tighten it up standards during the next legislative session after I have had time to perfect the amendments. I am also willing to consider amending ASA to encompass any exemption that may come out of this subcommittee's recommendations.

The following are excerpts from the ASA.

AS 45.55.130(12) Definitions:

AS 45.55.130(12) "'security' means... a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease; or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land;..."

AS 45.55.140 Exemptions:

AS 45.55.140(b)(5)(A)&(B). Sales by an Issuer.

(b) The following transactions are exempted from [registration under] this chapter...(5) sales by an issuer.

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection [offer or sale to a bank, investment company, institutional buyer, etc.] during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement; and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under sec. 100 [basically the disclosure provisions of ASA] of this chapter (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under sec. 40 of this chapter;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the securities will not be resold without registration under this chapter;

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be offered, and the terms of the offer at least two days before the offer is made;"

AS 45.55.140(b)(17) Proposed Legislation:

AS 45.55.140(b) is amended by adding a new subparagraph to read:

"(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers:

(A) are or have been during the preceding two years engaged primarily in the business of drilling for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing, or refining oil, gas, or minerals so as not to require the protection provided by sec. 070 of this chapter; and

(C) for purposes of this exemption "engaged in the business" means demonstrable expertise and activity by a person in the subject field of endeavor and shall include oil, gas, and mining corporations or principles but shall not include individuals who are employed in the business."

With these considerations in view, I have the following responses to the questions posed in your memorandum.

1. Should an exemption for the sale of fractional interests in oil and gas interests be accompanied by an amendment, if needed, to the definition section of the respective Securities Act to include an interest in an oil and gas lease, fee or title as being a security?

Yes, if there is to be an exemption, it should be related to the definition of a security. Alaska's act already contains such a definition (see excerpt above).

2. Should such definition include "or mining" so as to include coal leases and all other mining offerings?

As stated above, "mining" interests are already included in Alaska's definition, and the phrase should probably be included in the exemption under consideration.

3. Should a limit be placed on the number of offers and/or sales which can be made under the exemption? If the answer is "yes," what number would be an appropriate maximum?

If the exemption is for the sophisticated investor, i.e., deals between oil companies or mining companies, then probably no limits need apply. If aimed at "private offering" small deals, then I suggest 20 offers and 10 sales would probably be adequate.

4. Should the exemption apply to offers and sales, or only to sales?

Refer to 3 above. It should apply to both offers and sales unless the exemption is for sophisticated purchasers, e.g., major oil, gas, mining companies, etc., in which case there probably should be no limit.

5. If a maximum number is set, should it matter where the purchasers are from in counting to the maximum? In other words, would purchasers from all jurisdictions be counted in reaching a maximum or only those from the jurisdiction applying its law?

The staff of the division has a difference of opinion on this question. The staff feels if it is a sophisticated investor exemption, it does not matter where the investors come from to reach the maximum. On a private offering type exemption, I'm inclined to favor a maximum set by each state for sales within its jurisdiction plus a maximum of the total number of offerings nationwide on the theory there might be tighter control. That is, all X numbers in a given jurisdiction Y with a total not to exceed Z for all jurisdictions in order for an offering to be exempt in jurisdiction Y. I hasten to point out, however, that it may be doubtful whether an unscrupulous offeror would even disclose what activity went on in other jurisdictions under this type of exemption.

6. Should there be a dollar limit to regulate the maximum size of the offering? If a maximum should be set, what should it be?

For a "sophisticated" offering probably no dollar restrictions need apply. However, for a "private" offering type exemption, some overall ceiling should be set. The current private offering exemption of ASA sets a ceiling of \$100,000 interstate and \$500,000 intrastate (see AS 45.55.140 (b)(5) above).

7. Should there be a maximum or minimum limit set on the number of wells which could conceivably be drilled on the venture and/or lease?

I am not aware of all the implications of this question, but it seems that for a "sophisticated" offering, no limit need apply. I would be interested in hearing from other states on this question. The question might apply to a "private" type offering assuming that we could apply substantive standards to an exempt offering.

8. Should the number of leases within a single offering under the exemption be limited to one? Should there be any limit?

Refer to 7 above.

9. Should there be a requirement that the lease be in the state in which the offering is being made?

This question connotes a strictly intrastate offering and would probably be all right for a "noncontiguous" state like Alaska. However, the question raises problems for some contiguous states where leaseholds cross state lines. The restriction is probably not necessary for a sophisticated offering exemption, but we would favor it on a private offering exemption.

10. Should the exemption be limited to sales within a maximum period to time, i.e., twelve months? If so, what would be an appropriate period of time?

Yes, but I have two points here: if you mean an issuer or promoter could avail himself of the exemption only once in a set period of time, i.e., twelve months, then we would favor that limitation. The question may be construed another way, i.e., should we restrict the number of days in which the sale may take place? In this case a shorter period probably should apply. Again note the distinction between the two types of exemptions. I would not require a limitation in deals where the purchase is a major oil, gas or mining company.

11. Should the number of times the exemption could be used by a single issuer within a given period of time be restricted? If so, what would be a reasonable restriction? Who or what is the issuer?

(See 10 above.) It is critical that a definition of who or what is the issuer in any oil and gas or mining security be carefully worked out. Several states have attempted to define "issuer" in this context, but there is no consensus. Hopefully this committee can look at the several definitions and draft one that will be acceptable to all.

12. Should there be any requirement that a filing be made with the Securities Administrator either before or after the hearing (sale)? If a pre or post-filing requirement is desirable, what would be an appropriate time for such filing? How extensive should a filing be?

For purpose of notification to the administrator, even an exemption for sophisticated investors should have a pre-filing notice require-

ment, perhaps 10 days. The extensiveness of the filing would be different for the "sophisticated" investor as opposed to a private offering. At a minimum the issuer should furnish a description of himself and an outline of the intended use of proceeds. Conflicts of interest should be disclosed. If the notice to the administrator is in the form of post-filing, the fact that salesmen were receiving commissions or some similar type of remuneration would also have a bearing on the extensiveness of the filing notice. Some consideration could be given to a post effective sales report, e.g., names, addresses, amounts of sale. This report would then close out the State's exemption file.

13. Should the exemption be from the securities registration and dealer licensing requirements, or only an exemption from securities registration requirements?

Both.

14. If the exemption is from both securities registration and dealer licensing provisions, should any standard of exemption be different if sales are made through a registered dealer?

Again, the answer to this question depends on what type of exemption evolves from this questionnaire. Generally I favor no difference in the standard of the exemption whether made through a registered dealer or not. I think sales through registered dealers should, in fact, be encouraged, because of the additional regulatory control that the administrator has with a registered dealer.

15. Should any form of advertising be allowed? If so, what kind?

I would oppose advertising.

16. Should an organized sale effort and/or commissions be allowed?

In my view, the answer here depends on the definition of "organized sale effort." If it were to include newspaper advertising, "educational" seminars, etc., I am opposed. If the program were to include a telephone solicitation program (a rifle approach to a selected class of individuals as opposed to a shotgun approach), I think the sales effort could be allowed. I believe there will have to be some consideration given to commissions to registered broker/dealers, and agents who might sell one of these exempt offerings.

I do not believe we want to be in a position of precluding sales by registered people because we allow no sales commission. Perhaps, commissions or other remuneration should be allowed only to registered broker/dealers or agents to encourage sales through them.

17. Should there be any restriction on the form of contract (contact) (?) made with the prospective investors? i.e., restrictions on the use of the telephone or mail solicitation.

The answer is, yes, for both telephone and mail solicitation. Refer to 16 above.

18. Should the exemption limit the type of person to which an offering can be made? i.e., offers to "sophisticated" investors. If so, what is a "sophisticated" investor?

The sophisticated investor can be considered from two aspects, as noted in the opening paragraphs. If he has a technical expertise in the field, the requirements for the exemption should be very few. If his "sophistication" is limited to the existence of his own personal wealth with the assumption that he can or will obtain expert advice, the restrictions should be much more extensive. We have the rule 146 problem now with offeree-representatives. It would be even more acute in this area because, while people with wealth usually know or have an accountant who can look at the figures, they do not have such ready access to a geologist. I would consider an exemption for deals between oil companies and/or mining companies in the business to be the sophisticated for purpose of this exemption. It is not going to be easy to define "sophisticated."

19. Should public solicitation be prohibited? What is public solicitation?

Public solicitation should be prohibited, assuming "public solicitation" means use of the media, education programs (seminars), mass mailings or mass telephone solicitations.

20. Should a disclosure be required? If a disclosure document is to be required, what type of financing statements should be required?

A disclosure document should be required. The financial statement of any of the offerors (issuers) whose financial situation will have some bearing on the success of the program should be required. If the program seller is acting merely as a broker, it would not seem that his financials would be necessary. In other words, financials of all parties involved in a proposed development aspect should be furnished. Here again one is faced with the basic question of just how many substantive requirements can or should be imposed on an exempt offering. The same applies to 21 below.

21. Should the promoter's contribution to the project and/or the amount of income distribution the promoter may receive in any way be controlled? i.e., should the promoter be required to make some minimum investment or be entitled to benefit in any way from the offering before the investor receives a partial or 100% return?

Again, if the purchaser is "sophisticated" in the sense that he has expertise in the area, I am not concerned about the promoters contribution or the income distribution. If the investors are not sophisticated, I suggest that we look to the Mid-west Oil and Gas Guidelines for standards.

22. Should the exemption for the sale of fractional interest in oil and gas leases tie into any other exemptions existing within the law? i.e., some jurisdictions exempt sales made to registered dealers, financial institutions, etc.

I believe some of these programs would already come under existing Alaska exemptions (AS 45.55.140(b)(5) and AS 45.55.140(b)(4)) and see no problem with an issuer or offeror having an exemption under more than one statute unless, of course, he would attempt to make them cumulative.

23. Should there be any special exemption for sales to persons who are "in the oil business?"

I think there should be and, in fact, through these questions, have had this in mind in commenting on a proposed sophisticated investor

exemption. I am referring here, primarily, to oil, gas, or mining companies doing business with one another or with individuals who are demonstrably and actively in the business. Please refer to the proposed legislation at the beginning of this memorandum. This exemption was not introduced by our division but we are following it with interest and have suggested the language dealing with definition of "engaged in the business."

24. Should the exemption be dovetailed into the existing NASAA guidelines for the sale of oil and gas interests? i.e., would it be desirable to use the existing guidelines, with modifications designed to account for the differences between the sale of fractional interests and the sale of limited partnership interests so that exemption offerings and registered offerings would not be interpreted from different viewpoints.

This may be a good point of discussion, but it does raise the problem of extending substantive requirements into an exempt area.

25. What are the specific characteristics of fractional, undivided, participating working interests in oil and gas leases and/or wells that require special legislation to provide a workable exemption from registration and/or dealer licensing?

I do not know enough about the "specific characteristics" to suggest remedial legislation. We do not want an exemption that will invite the Schedule "D" operators into Alaska.

26. How many inquiries and/or complaints from the oil and gas industry has your agency received in the last three years indicating that the oil and gas industry in general and/or specific offerors of securities were in any way suffering from current law regarding the sale of fractional working interests in oil and gas leases?

March 28, 1978

Perhaps 8 or 10 inquiries from Rule 146 offerors and some Schedule "D" promoters. In each case, because sales commissions were envisioned, registration by qualification has been required under ASA. They do not usually complain — they just go away.

27. What are the specific problems which have been perceived in your jurisdiction with the sale of fractional interest in oil and gas leases? Would the end result of this project, if successful, relieve those current problems, and, if so, how?

We would like to permit the local oil and gas leaseholder who has no intention of developing his lease, to sell to oil companies who are willing to buy up the leases and develop them. We would like to keep control of the Rule 146 offerings and the Schedule "D" offerings. We have not experienced too many complaints in this area. The only security problems we have had with leases are the sales of them by people who did not own them.

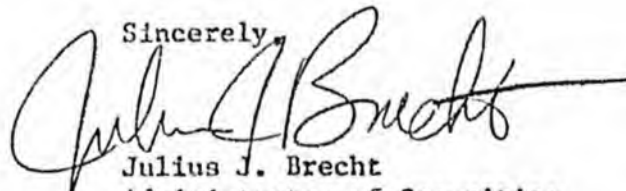
Alaska like every other state, is plagued by the occasional Schedule "D" offering mailed into the state. However, when these come to the division's attention, a C&D is issued. The division has had not success with rescission in these instances.

I hope a uniform exemption can be worked out, and (assuming it is) adopted by a number of jurisdictions. It will probably solve some of the problems. At least I hope we will not create more than we can solve.

Some considerations should be given to the administrator's right to deny or revoke exemptions, particularly, if we are going to impose substantive requirements on this type of an exemption. The Uniform Securities Act permits denial of exemption and provides for a hearing process. It is suggested that this committee consider regulations for standards upon which denial can be based.

I look forward to an interesting meeting in Washington next month.

Sincerely,



Julius J. Brecht
Administrator of Securities

JJB/slp20K1-14

cc: Paul Blatt
Bruce Day
Dwight Keen
Barry Lake
John R. Larson
Arly Richau
A. M. Swarthout

STATE OF ALASKA
Inter-Department Route Slip

TO: MAIL STATION NUMBER Court Bldg. Rm. 628
DEPARTMENT House
ATTENTION Joseph McKinron

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| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
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| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input checked="" type="checkbox"/> Your Information |

Remarks:

FROM: MAIL STATION NUMBER 0800
DEPARTMENT Commerce
BY J. Brecht / Air DATE 3-15

02-002 (REV. 10/73)

JAY S. HAMMOND, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

March 15, 1978

Mr. Lum Lovely
Geologist
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

I have just received your letter of March 11, 1978 concerning HB 786, a bill which would amend the Alaska Securities Act. This letter is to confirm our telephone conversation of today on this subject.

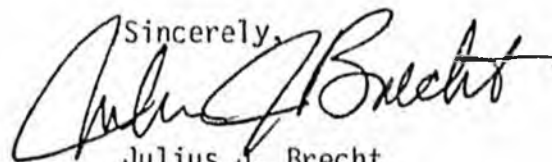
Pursuant to that telephone conversation, please find enclosed a copy of a questionnaire that I have been asked to complete concerning the possibility of North American Securities Administration Association adopting a "uniform exemption for the sale of fractional interests in oil and gas leases." Would you please fill it out and return it to me so that the NASAA Oil and Gas Subcommittee #2 may consider your comments.

Because of the issues that are raised in the questionnaire and because of the potential for abuse of the proposed Sec. 45.55.140(b)(17) exemption from registration by unscrupulous persons dealing in oil and gas leases, I am extremely reluctant to endorse the proposed section 2 of the bill at this time, i.e., providing for Sec. 45.55.140(b)(17). The Alaska Securities Act is based on a uniform act, and I believe that it would be prudent to wait at least until the next legislative session to consider an explicit exemption in the oil and gas area. In the meantime, I shall be working with other members of the NASAA subcommittee to come to a consensus on this issue.

Of course, Sec. 1 of the bill would repeal AS 45.55.130(7)(B) and thereby allow you to take advantage of the private offering exemption found at AS 45.55.140(b)(5).

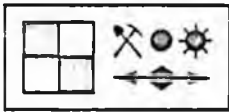
Thank you for your interest in this matter.

Sincerely,



Julius J. Brecht

cc: C. V. Chatterton
Joseph L. Orsini
Joseph McKinnon
Alaska Miners Association
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen



LUM LOVELY

File HB 786
Geologist

P.O. BOX 99 • ANCHORAGE • ALASKA • 99510

OIL, GAS & MINERAL PROPERTIES

February 27, 1978

Mr. Julius J. Brecht, Director
Division of Banking, Securities and Corporations
Department of Commerce and Economic Development
Fouch D
Juneau, Alaska 99811

Re: Proposed Substitute for House Bill No. 786
Amendments to Alaska Securities Act of 1959

Dear Mr. Brecht:

In reference to the three-way telephone conference of February 22, 1978, in which you, Securities Examiner James L. Thompson and I discussed the merits and demerits of certain proposed amendments to the Alaska Securities Act of 1959, I am in complete agreement with Mr. Thompson's suggestion that the "private offering" exemption, AS 45.55.140(b)(5), can quite readily be expanded to cover both whole and fractional oil, gas, and mineral interests by the simple expedient of dropping AS 45.55.130(7)(B) from the current definition of "issuer". I also agree with you that a "sophisticated purchaser" exemption, similar to the one which the State of California adopted in 1963, would expedite dealings with oil and mining companies (where dollar amounts larger than those specified in the current "private offering" exemption are involved) while at the same time maintaining protection for unsophisticated investors.

A simple repeal of AS 45.55.130(7)(B) is, of course, all that is needed to bring about automatic expansion of the "private offering" exemption to include whole as well as fractional oil and gas interests. In the case of the "sophisticated purchaser" exemption which you proposed in your letter of February 10, 1978, however, a few minor changes in your suggested wording appears necessary in order to conform the exemption more closely to the statutory definition of "security" and to expand it to cover sales of mineral interests as well as oil and gas interests.

I learned from you for the first time during our telephone conversation that your proposed amendment to AS 45.55.130(7)(B), which you sent to Representative "Chat" Chatterton along with your letter of January 26, 1978, has been submitted to the legislature as House Bill No. 786 and that it now resides in the House Commerce Committee where it will be given further consideration in hearings two to three weeks from now. By copy of this letter, I am asking Committee Chairman Joseph H. McKinnon to notify me a few days in advance of such hearings in order that I might have an opportunity to testify. Meanwhile, in light of the foregoing observations, I respectfully suggest that the present wording of HB-786 be deleted in its entirety, and that new wording be substituted in lieu thereof, as follows:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45.55.130(7)(B) is repealed.

* Section 2. AS 45.55.140(b) is amended by adding a new subparagraph (17) to read:

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if all of the purchasers:

(A) are and have been during the preceding two years engaged primarily in the business of exploring for, producing, extracting, or refining oil, gas, or minerals, or

(B) are persons described in clause (4) of subdivision (b) of this section, or

(C) have been found by the commissioner upon written application to be substantially engaged in the business of exploring for, producing, extracting, or refining oil, gas, or minerals so as not to require the protection provided by Section 070 of this chapter.

For the sake of uniformity and clarity in drafting the foregoing proposal, I have adopted the syntax and some of the language of California's aforementioned "sophisticated purchaser" amendment of 1963 (see Cal. Corp. Code Ann., §25102(j)). Like the California statute, for example, the foregoing proposal covers both offers and sales, and it conforms to the statutory definition of "security" in both California and Alaska in its coverage of "certificates of interest or participation" in oil, gas, and mining rights, titles, or leases and in "payments out of production" under such rights, titles, or leases (see AS 45.55.130(12) and Cal. Corp. Code Ann., §25019).

By way of comparison, your proposal of February 10, 1978, fails to cover offers, and does not exempt sales of mining interests or production payments. Accordingly, it is neither uniform with the California code nor does it conform with the definition of "security" as used throughout the Alaska Securities Act.


In further comparing our respective proposals, mine substitutes "exploration for" in place of your (and California's) "drilling for", in order to cover geophysical activities which are just as important (and often as costly) as drilling in the overall search for oil, gas, and minerals; it utilizes the word "minerals" instead of your "mining interests" in subparts (A) and (C) for grammatical reasons; it adds the word "extraction" to subparts (A) and (C) to cover mining operations; and, finally, like the California statute, subpart (B) of my proposal covers sophisticated purchasers such as banks, savings institutions, trust companies, insurance companies, etc., whereas subpart (b) of your proposal covers investment companies only.

February 27, 1978

As a result of our aforementioned telephone conversation and your letter of January 26, 1978, to Rep. "Chat" Chatterton, I know how important it is to both you and Mr. Thompson that we "bring our uniform act into uniformity", not only with the laws of other states but to the corpus of Alaska's own Securities Act as well. I believe my foregoing proposal accomplishes this end. Accordingly, by copy of this letter, I am asking House Commerce Committee member "Chat" Chatterton to submit my proposal as a committee substitute for currently pending House Bill 786. A copy of my proposal is herewith enclosed in suggested bill format for the House. By copy of this letter I am also asking that Senator Joe Orsini introduce a similar bill in the Senate.

I wish to take this opportunity to express my thanks to you and Mr. Thompson for the many helpful suggestions which you offered during our aforementioned telephone conversation of February 22, 1978. Hopefully, with your continued cooperation, current conflicts in the Alaska Securities Act can be reconciled to everyone's satisfaction before the end of the current legislative session.

Very truly yours,



L. C. LOVELY, JR.

Encl.

Copies to: Rep. C. V. Chatterton, Sen. Joseph L. Orsini, Alaska Miners Association, Alaska Association of Petroleum Landmen, Alaska Oil and Gas Association, and Alaska Geological Society (please note Alaska Geological Society's mailing address has changed to P. O. Box 1515, Anchorage, Alaska 99510). Also Rep. Joseph H. McKinnon.



Oil, Gas & Mineral Properties

LUM LOVELY, Geologist

P.O. Box 99
Anchorage, Alaska 99510

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. Joseph H. McKinnon, Chairman
House Commerce Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear Mr. McKinnon:

As an addendum to testimony which I presented to your committee at a hearing held in Juneau on March 20, 1978, I wish to stress here that neither section of my proposed two-section Substitute For House Bill 786 (copy attached) need be considered or enacted jointly with the other, inasmuch as each section stands separately on its own respective merits. Accordingly, I urge you to make every effort possible to enact Section #1 of my proposal, even if you should fail to gain legislative support for my somewhat controversial Section #2.

Section #1, of course, is a simple one-line repealer designed strictly as a housekeeping measure to restore original legislative intent to last year's repeal and re-enactment of AS 45.55.140(b)(5). As you know, this non-controversial section of my proposal is fully endorsed by Mr. Julius J. Brecht, author of the administration's original version of House Bill 786 which now resides in your committee.

I wish to thank you for notifying me of the aforementioned hearing in order that I might have an opportunity to present my views to your committee in person. Your continued cooperation in keeping me informed with respect to the progress of House Bill 786 will of course be greatly appreciated.

Sincerely,

L. C. LOVELY, JR.

Encl.

Copy: Mr. Julius J. Brecht
Rep. C. V. Chatterton
Sen. Joseph L. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen



LUM LOVELY, Geologist

P.O. Box 99
Anchorage, Alaska 99510

Offices located at
1016 W. 6th Ave., Suite 440
Anchorage, Alaska 99501
Phone (907) 277-1551

March 21, 1978

The Hon. C. V. Chatterton
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill 786

Dear "Chat":

As you know, groups of oil companies often join together for the purpose of drilling exploratory wells. Sometimes they go the full partnership or joint venture route where all parties have a direct say in all operations. At other times, however, they prefer the limited partnership route which takes operational control away from the investing companies (limited partners), but protects them ^(the limited partners) with limited legal and financial liability. The General Partner in a limited partnership has full and complete operational control but, in exchange therefor, he must assume the burden of unlimited liability.

I'm sure Gene Wiles will confirm for you that limited partnerships are classified as "investment contracts" under most securities laws (including Alaska's) and, as such, they are subject to registration under such laws. If Section #2 of my proposed substitute for House Bill 786 is not enacted, of course, all such ventures involving more than half-a-million dollars here in Alaska must be fully registered under the Alaska Securities Act, even if all of the partners (both general and limited) are oil companies which need no protection under Section 70 of the Act. No wells are being drilled in Alaska these days, of course, for less than \$500 thousand.

The foregoing example is only one of many which could require needless securities registrations by sophisticated oil companies. Such ludicrous registration could become commonplace here in Alaska, of course, if an appropriate exemption is not provided soon. I therefore urge you to "harg in there" in defense of Section #2 of my proposed substitute for House Bill 786.

If my proposal is enacted, of course, you will be doing everyone a favor. You will at the same time be eliminating needless registration by oil companies while eliminating needless administrative work on the part of the State. God knows, the oil companies and the State have enough to do already without taking on the burden of a ludicrous charade of needless securities regis-

March 21, 1978

trations as well.

I leave it in your persuasive good hands, Chat. Your efforts in behalf of my proposed bill will be greatly appreciated.

Sincerely,



L. C. LOVELY, JR.

Copy: Julius J. Brecht
Joseph H. McKinnon
Joseph E. Orsini
Alaska Miners Association
Alaska Geological Society
Alaska Oil and Gas Association
Alaska Association of Petroleum Landmen

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99811

March 23, 1978

Honorable Joseph McKinnon, Chairman
House Commerce Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. McKinnon:

Re: HB 786

In yesterday's hearing on HB 786, a number of issues were discussed. I thought it might be helpful to you and members of the House Commerce Committee if I briefly summarized the points that I raised concerning the bill.

As you know, the Legislature enacted SB 48 during the previous session. One provision of that bill amended the private offering exemption found at AS 45.55.140(b)(5) of the Alaska Securities Act (ASA). The amendment changed the exemption by using the terms "sales" by "issuers" rather than "offers" of a security. Under AS 45.55.130(7)(B), transactions involving certificates of interest in oil, gas, or mining titles or leases and related matters do not involve an "issuer." Therefore, the 1977 amendment to Sec. 140(b)(5) precludes a person dealing in oil, gas, or mining leases as defined in Sec. 130(7)(B) from seeking a private offering exemption from registration. This exclusion was not intended by the Administration in introducing SB 48 last year.

The ASA is based in large part on the Uniform Securities Act, which has also been adopted, or is followed, by approximately 43 other states. The bill before you attempts to resolve the problem of defining an issuer by explicitly expanding the language of Sec. 130(7)(B). Twelve

other states have made similar attempts. However, 35 states have remedied the problem by simply deleting the language found at Sec. 130(7)(B). In this way, an "issuer" simply means a person who issues a security as provided by Sec. 130(7)(A). This approach is more streamlined, precludes the need for cumbersome verbage, and relies on the detailed definition of a security found at AS 45.55.130(12).

Mr. Lum Lovely testified before your committee in favor of another amendment to the bill. That amendment provides an explicit exemption from registration for oil, gas, or mining lease offerings involving sophisticated investors. During the course of the past several weeks, I have had several conversations with Mr. Lovely and have corresponded with him during the past weeks on this proposed exemption. The language that he proposed follows the law of California very closely.

However, this past week I received a 27 part questionnaire from the chairman of a North American Securities Administrators Association committee recently formed to study and make recommendations on an exemption for sophisticated investors or perhaps a private offering exemption (similar to Sec. 140(b)(5)) in the area of oil, gas, or mining lease offerings. I am a member of that committee. The recommendations of that committee will amend the Uniform Securities Act on which ASA is based. During the hearing before your committee, I recommended that the committee defer consideration of the exemption until I have had the opportunity to discuss the matter of the questionnaire with my counterparts in other states and, hopefully, after the NASAA committee has made appropriate recommendations for changes to the Uniform Securities Act. I stated that I would certainly be in a position to recommend legislation by no later than the next session of the Alaska Legislature.

I then pointed out that if the committee was disinclined to follow this advice, that I was concerned about the language that is proposed by Mr. Lovely for the exemption. For example, what does the phrase found in the proposed Sec. 140(b)(17)(A), "primarily in the business of" drilling for oil or gas for at least two years mean? Does it include a roughneck working on an oil rig; does it include a corporation formed, but not actively in the business; does it mean at least two years active experience? I stated that I had serious concern about this exemption being used by con-artists to bilk the Alaska investing public of thousands of dollars. Similar problems have occurred and are occurring in Texas and Oklahoma where state law does not presently require registration of certain drilling programs called "schedule D" offerings. Alaska does not have the problem because these programs must be registered under present provisions of ASA. Therefore, any exemption in this area will have to be carefully written to ensure that the primary purpose of ASA, i.e., protection of the Alaskan investing public from fraud and misrepresentation is not circumvented.

Honorable Joseph McKinnon

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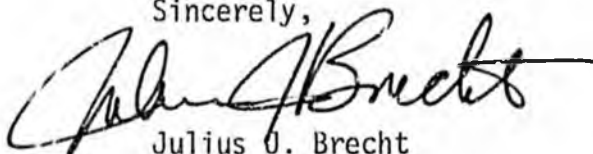
March 23, 1978

The House Commerce Committee can, of course, amend ASA in any manner consistent with the Alaska Constitution. I am sure that some sort of exemption could be devised without the input of NASAA or the experience of other states that are more deeply involved on oil and gas lease offerings. However, to do so would, in my estimation, run the risk of overlooking other effects on the ASA and may lay the Alaskan investor open to fraud and misrepresentation.

The repeal of Sec. 130(7)(B) will satisfy Mr. Lovely's immediate problem, i.e., access to the Sec. 140(b)(5) exemption. In addition, it is likely that he can also enjoy the Sec. 140(b)(4) exemption in transactions where he offers or sells an oil or gas lease to an oil company. That is, the oil company may be an institutional investor, depending on the circumstances of a specific case. Mr. Lovely has submitted a request to me for an interpretation of Sec. 140(b)(4) in this context.

In conclusion, It is my view that the oil and gas lease exemption is not needed to solve Mr. Lovely's immediate problem. I, therefore, recommend that the explicit exemption provision be deferred until next session, at which time detailed and well reasoned testimony may be given on an oil and gas lease offering exemption. In the alternative, I would, of course, be available to the committee at this time to attempt to draft an adequate exemption. Please do not hesitate to contact me if you have any further questions concerning these comments or related matters.

Sincerely,



Julius O. Brecht
Director

JJB:lc2:1

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS

POUCH D - JUNEAU 99311

February 10, 1978

Mr. L. C. Lovely, Jr.
P.O. Box 99
Anchorage, Alaska 99510

Dear Mr. Lovely:

Your letter of January 31, 1978 commenting on our proposals to solve the dilemma of oil and gas interests created by AS 45.55.140(b) has been reviewed.

We thank you for concurring that our proposal to change the definition of an "issuer" is a step in the right direction.

Your comments have raised other questions which I will try to answer in the order posed.

The first point raised in your letter was that you would have to go through the full registration process in selling an entire leasehold interest. This is not so either under present statutes or under the proposed changes. At the present time an exemption from registration for whole leasehold interests may be available under AS 45.55.140(b)(9), the exemption for isolated non-issuer exemptions (emphasis added). In our proposed revision up to 25 sales of issues of oil and gas interests may be exempt under AS 45.55.140(b)(5).

You recommend that we change our definition of oil and gas securities to coincide with federal law. At the present time Alaska's Securities Act is not based on the federal acts but on the Uniform Securities Act adopted by the majority of states. It should be noted that no state follows the narrow federal definition of oil and gas interests. The reasons that state "Blue Sky" acts differ from the federal act are 1) that the federal acts are meant to be merely disclosure oriented while state acts speak to substantive standards, and 2) the Securities Act of 1933 applies only to this initial offering of a security while the state acts address themselves to subsequent or secondary transactions. The Federal Government has left the public protection and substantive standards to the states to regulate thus avoiding duplication of efforts.

Mr. L. C. Lovely, Jr.

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February 10, 1978

The drafters of the Uniform Securities Act expanded the oil and gas security definition to "make it clear that so called 'oil payments' are securities whether or not they may be considered as interests in a title or lease." (Official Comment to 401(1) of the Uniform Securities Act, Blue Sky Law, Loss and Cowett (1958) at 350). The official comment further states: "However, it is clear that even entire leasehold interests may be offered under such circumstances that a security is involved in the nature of an 'investment contract'... SEC v. CM Joiner Leasing Corp. 64 S.Ct.120, 320 U.S. 344, 88 L. Ed. 88 (1943)." (Official Comment, supra at 350).

Therefore, it appears that no matter what type of legislation is introduced, whole leasehold interests may be held to be securities as an "investment contract" under both state and federal securities laws.

It is the opinion of the division that the changes that you propose would be unwise and not in the best interest of Alaskan investors as it could result in excluding from regulation those operations where the promoter is promising only future royalties without even the security of an underlying title.

You have also recommended that we make a blanket exemption for all oil and gas securities. This change would create two major problems: discrimination against other forms of securities and increased losses by Alaskan's from unscrupulous promoters.

An exemption of all oil and gas offerings would lead to immediate protests from real estate, manufacturing, chemical, service industries, etc. demanding equal treatment in having all of their securities exempted by statute also.

The second problem raised would be that Alaska would immediately become "open season" for unethical and fraudulent oil and gas operators. This State and others were hit by a rash of these promotions from Oklahoma, Texas, and Louisiana in late 1975 and early 1976. However, prompt action and strong securities laws effectively stopped this fraudulent activity by February of 1976. At the present time we are cooperating with the State of Oklahoma in a current promotion that might involve as much as \$2,000,000 in losses by Alaskan investors from an unregistered oil and gas offering.

It should be noted that last year we had the first two criminal convictions under the Alaska Securities Act since 1964. They both concerned unregistered offerings of either oil and gas or mining securities.

Mr. L. C. Lovely, Jr.

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February 10, 1978

California added an exemption to their act in 1963 as a result of a proposal by the Oil and Gas Committee of the Los Angeles County Bar Association to exempt transactions between oil firms. Adoption of a similar exemption might solve your very real problem in dealing with a sophisticated oil company while at the same time maintaining protection for the Alaskan investor. The exemption that I propose would read as follows:

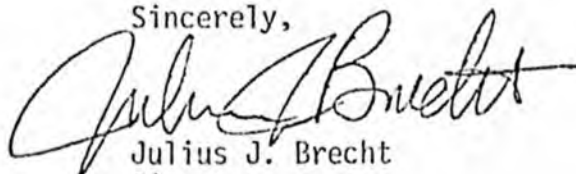
AS 45.55.140(b)(17). sales of oil and gas interests, if all of the purchasers meet any one of the following criteria:

- (a) they are and have been for the preceeding two years primarily engaged in the business of drilling for, producing, or refining oil and gas or mining interests;
- (b) investment companies as defined in the Federal Investment Company Act of 1940; or
- (c) they have been found by the administrator upon written application to be substantially engaged in the business of drilling for, mining, producing or refining oil and gas or mining interests so as not to require the protection afforded by Sec. 070 of this chapter.

I feel that if legislation is enacted relating to the definition of an issuer and the above exemption, it would solve the problem for ethical oil and gas and mining operators while, at the same time, maintaining full and adequate protection from fraudulent and incomplete disclosure that is presently enjoyed by the Alaskan investing public.

If you have any further comments or suggestions, feel free to contact me at any time.

Sincerely,



Julius J. Brecht
Director

JJB/slp5/12

cc: C. V. Chatterton
Joseph L. Orsini
Alaska Miners Association
Alaska Association of Petroleum Landmen
Alaska Geological Society
Alaska Oil & Gas Association