

1969 O. A. G.

OFFICIAL OPINION NO. 20

August 1, 1969

Hon. William N. Salin  
Secretary of State  
201 State House  
Indianapolis, Indiana

Dear Mr. Salin:

This is in response to your request for an Official Opinion as to the intent of the 1967 General Assembly in amending Acts of 1961, Ch. 333, Sec. 102(a) (7) as found in Burns' (1968 Supp.), Section 25-855.

Prior to amendment, said Section exempted securities from registration which evidenced an obligation to pay cash within twelve months of the date of issuance. The 1967 amendment added the wording arising "out of a current transaction."

The Federal Securities Act of 1933 [15 U.S.C.A. 77 C (3) (a)] and the Uniform Securities Act, Section 402 (a) (10), are, for all practical purposes, the same as the provisions of the Indiana Act, in that exemption from registration is permitted for transactions arising out of a current transaction. The Federal and Uniform Acts call for a 9-month period of time, while the Indiana Act calls for a 12-month time period. The material substance of all three acts is, however, identical.

Since all three sections are materially identical, the legal principle applicable to a state's adoption of a federal statute verbatim is applicable thereto. This principle states that it may be presumed when a legislature adopts a federal statute verbatim, the legislature knows of the interpretation placed on the provision as expressed during the Congressional debates prior to adoption.

An interpretive statement was issued by the Securities and Exchange Commission in 1961 concerning the aforementioned section, of which notice was taken by the Secretary of State's Committee on the Indiana Securities Act. This interpretive release [Release No. 33-4412, September 20, 1961, 26 F. R. 9158] stated, in part, as follows:

“\* \* \* The legislative history of the Act makes clear that section 3(a)(3) applies only to prime quality

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negotiable commercial paper of a type not ordinarily purchased by the general public, that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve banks. Thus the Senate Report on the Securities Act of 1933 explained the purpose of section 3(a)(3) as follows:

“Notes, drafts, bills of exchange, and bankers’ acceptances which are commercial paper and arise out of current commercial, agricultural, or industrial transactions, and which are not intended to be marketed to the public, are exempted. \* \* \* It is not intended under the bill to require the registration of short-term commercial paper which, as is the usual practice, is made to mature in a few months and ordinarily is not advertised for sale to the general public. (S. Rep. No. 47 on S. 875, 73rd Cong., 1st Sess. (1933), pp. 3-4)’

“The House Report on the Act stated:

“Paragraph (3) exempts short-term paper of the type available for discount at a Federal Reserve bank and of a type which is rarely bought by private investors. (H. R. Rep. No. 85, 73rd Cong., 1st Sess. (1933), p. 15. See also H. R. Rep. 875, 73rd Cong. 1st Sess., pp. 94-95, 120.)’”

There is a dearth of court decisions interpreting the Federal Securities Act and the Uniform Law, and none has been found. However, absent such decisions, the Securities and Exchange Commission’s Interpretive Release No. 33-4412, quoted above, should be deemed to be determinative of the intent of the Congress and the meaning of the federal law, since that Commission is the body governing and is administering the federal securities laws. It is entirely clear from the statement of the Secretary of State’s Committee on the Indiana Securities Law that the intent of the 1967 amendment of Section 102 was to conform it to the construction

placed upon the federal law by the Securities and Exchange Commission and the Uniform Law.

It is my opinion, therefore, that it was the intent of our Legislature to narrow the exemption from the registration requirements of the Indiana Securities Act by limiting the nature of the securities falling under the exemption to price quality negotiable commercial paper of a type not ordinarily purchased by the general public and of such highly negotiable nature so as to be readily discounted by Federal Reserve banks. Such a limitation could not be expanded to include short-term notes of local issuers of securities offered to the general public.

It is my further opinion that the Secretary of State has statutory authority under the Securities Act to promulgate any necessary rules and regulations to implement this interpretation.