

PUBLIC SERVICE COMMISSION OF WISCONSIN

MADISON, WIS..

April 3, 1933

Mr. A. A. Berle, Jr.
c/o BERLE & BERLE, Attys.
70 Pine Street
New York, N. Y.

Dear Mr. Berle:

I have had a chance to make a hurried examination of Bill S. 875 in the Senate of the United States and in the main am very much in favor of the proposed legislation. There are, however, a number of matters of detail which I think are questionable and on which I have written a memorandum for Mr. Lilienthal. I am enclosing a copy of that memorandum with this letter.

According to present plans I will be in Washington the morning of April 12 and will probably be ready to leave the afternoon of the 13th. I expect to be at the Mayflower Hotel and if you think that any purpose would be served by my discussing the bill with any of the parties interested in Washington I will be very glad to do so if you will put me in touch with them.

Very truly yours,

George C. Mathews

Director, Securities Division

GCM:MLB

April 3, 1933

Mr. D. E. Lilienthal, Commissioner
PUBLIC SERVICE COMMISSION OF WISCONSIN
State Capitol

Dear Mr. Lilienthal:

Mr. Johnson and I have examined Bill S. 875 pending in the Senate of the United States. There are a few portions of the bill that I should like to comment on.

The bill seems to be drawn with particular reference to new issues. I think there may be difficulty with reference to outstanding issues not covered by the exemption at the top of page 22 in Section 11 (e). In view of the fact that the statement to be filed with the Commission must be verified by officers and directors of the issuer, it seems to me that officers and directors may be unwilling to take the risk of any liability where the securities are already issued and outstanding in the hands of the public. Unless the company anticipates the need of additional financing, it would seem that the officers and directors of the issuer might well refuse to sign the statement which would have the effect of paralyzing the market on outstanding issues. In some cases this probably would be a desirable result but it seems to me that the possibilities in that direction are perhaps greater in this bill than desirable.

With reference to issues which are outstanding also I note that Sec. 11 (c) contains an exemption of sales by the owner which is quite similar with reference to repeated and successive transactions to the provision which was in our law prior to 1931. My understanding is that a similar provision in the California law was held to be unconstitutional by the supreme court of that state and that a lower court in Indiana held a similar provision unconstitutional. On the other hand, similar provisions have been upheld in Oregon and Minnesota but in opinions which were not reasoned very closely. We felt that there was considerable danger of the provision of our old law being held unconstitutional and consequently in 1931 the present provision, section 189.03 (10) was put in the law.

Sec. 6 (d) is very broad as I understand it. It would seem, for instance, to give the right of revocation in a case where the issuer might be in violation of a city ordinance or might have overloaded a truck in violation of the highway law. Possibly this subsection should be made more definite.

Also in Sec. 6 (f) is a very broad statement which is likely to lead to administrative difficulty although it is a provision which I think will ultimately have to be exercised by the government. That is, I think that the right to go to the public for funds in cases where the promotion may be perfectly honest but where the plan of business is unsound or the probability of loss disproportionate to the possible profits involved will have to be restricted.

Also in Sec. 6 (f) which deals with the right of examination by the Commission it seems to me that some immunity provision may be required. In the substitute amendment to our bill we provided, in 189.16 (4) that "no such dealer, or agent, or employee of a dealer, and no such issuer, or agent or employee of an issuer shall be prosecuted or subjected to penalty or forfeiture for or on account of any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding or investigation before the commission, except in a prosecution for perjury or false swearing in connection therewith".

Sec. 8 seems to me to need redrafting. As it stands it would prohibit a dealer writing a letter in response to an inquiry unless he included in the letter a balance sheet and income account and certain other information. More than this, as it is drawn it would require that, in any radio program in which a security is offered, the balance sheet and income account would have to be read. I hardly think it was the intention to require all of this detail in such cases.

Sec. 14 which restricts sales into a state in interstate commerce to securities which may lawfully be sold within the state is excellent and I agree with the provision fully but I am wondering whether it might not be advisable to go further and to provide that the securities may not be offered in interstate commerce for sale into a state unless the party making the offer could lawfully offer them within the state and unless the methods of their sale were lawful within the state.

I do not want to give the impression because of criticism of detail in the bill that I am not in favor of the general plan proposed. I think the program is an excellent one and, except for details as pointed out, am decidedly in favor of the bill.

I am returning your copy of the bill with this memorandum.

Very truly yours,

Director, Securities Division

GCM:MLB