

February 17, 1961

The Honorable Harvey M. Johnsen
Chief Judge
United States Court of Appeals
Federal Building
Omaha 2, Nebraska

Re: No. 15,765, Dyer v. Securities
and Exchange Commission

Dear Judge Johnsen:

I have your letter of February 10 and the proposed opinion in this case. I have read the opinion with great interest and I fully concur. I also share Judge Van Oosterhout's comments set forth in the last three paragraphs of his letter to you of February 13.

I raise one question, primarily out of ignorance. On page 2 of the opinion, just below the center of the page, appears the expression "They have not undertaken to make proxy solicitations of their own * * *." I suppose this is a correct statement, at least from the point of view of the Dyers, but am I not correct in my understanding that one of the issues in Case No. 16,554, which was argued in November 1960, is whether Dyer's postcard constituted a solicitation of proxies for the 1957 meeting. I mildly raise this question only because No. 16,554 is still pending and because we probably would not wish a statement in the present opinion to have any appearance of passing on an issue pending before us but not yet decided. This would be so however that issue is ultimately determined and I suspect that Mr. Dyer would be inclined to take full advantage of it. I may be completely off center in this comment for you are very familiar with all the records of these various cases. Please feel free to disregard this comment if you think it proper so to do.

I suppose your secretary has noted the typographical error in the next to the last line on page 19.

Very truly yours,

cc Judge Van Oosterhout

H. A. Blackmun