



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

April 25, 1947

Hon. Paul H. Brown
Secretary of State
Austin, Texas

This Opinion overrules
Opinion No. O-6311
Opinion No. V-165

Re: The applicability of
the Securities Act to
a group retirement
plan issued by a non-
profit group.

Dear Sir:

You have requested the opinion of this department as to whether or not the Employee Retirement Plan of Safeway Stores, Inc. and its United States subsidiaries come within the provisions of the Texas Securities Act.

A careful examination of the copy of the plan and the certificate issued to each employee contributing thereto, submitted with your request, discloses that the retirement plan or membership therein does not fall within the definition of a "security" as defined in Section 2 (s), House Bill 521, Acts of the Forty-fourth Legislature, Regular Session, 1935, (Article 600s, Vernon's Civil Statutes) which is as follows:

"The term 'security' or 'securities' shall include any share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, pre-organization certificate or receipt, subscription or reorganization certificate, note bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or

earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not."

It will be noted that the "certificate" above referred to is not transfereable either on its face or under the provisions of the Plan, but on the contrary is merely evidence of the fact that the employee named therein is a subscriber to or a member of the Plan subject to its terms and provisions.

It does not appear from either the Plan submitted or from other information that the employee is in any manner solicited by the employer or the committee to become a member of the Plan but such membership is made available to him after he has (1) communicated in writing to the committee of his acceptance of the terms and conditions of the Plan on the form provided by the Committee and (2) authorized the employer in writing to deduct from his compensation the contribution specified in the Plan (See Article II, Paragraph 2 of the Plan). All contributions to the trustee under the Plan are to take place in the State of New York. (See Article VIII, Paragraph 7 of the Plan)

The beneficial interest or share of the employee in the Plan is payable to him in varying amounts and dependent upon certain contingencies. (See Articles IV and V of the Plan). Such interest cannot be alienated or sold in any manner by either the member beneficiary or survivor. (See Article VII, Paragraph 2 of the Plan).

Although the Plan contains many features in common with group retirement insurance, such as contributions by employer and employee, based on length of service or other similar classifications, and providing for a sum payable upon certain conditions upon the happening of certain eventualities, nevertheless it is not an annuity as such term is generally understood.

The legal effect of the Plan is to create a savings fund for the benefit of the employee, the management and control of which is vested in the employer, the committee and the trustee, which fund is to be disposed of by the trustee upon the contingencies set forth in Articles IV and V of the Plan and therefore, the Employee

Hon. Paul H. Brown - Page 3, V-165

Retirement Plan of Safeway Stores, Inc. is not subject to the Texas Securities Act.

The foregoing holding being in conflict with Opinion No. 0-6311, approved on February 19, 1945, such opinion is overruled.

SUMMARY

The Texas Securities Act is not applicable to the Employee Retirement Plan of Safeway Stores, Inc., the same being a non-profit retirement plan with certificates not subject to sale, transfer or assignment. Attorney General's Opinion No. 0-6311 approved February 19, 1945, overruled.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



C. K. Richards
Assistant

OER/ln

APPROVED: April 25, 1947



ATTORNEY GENERAL