

DIRK KEMPTHORNE
GOVERNOR



GAVIN M. GEE
DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P.O. BOX 83720
BOISE, IDAHO 83720-0031
Website: finance.state.id.us

March 11, 2002

Re: Declaratory Ruling- Entertainment Cooperative

Dear

This is in response to your letter of February 19, 2002 requesting a "Declaratory Ruling" from our Department with regard to whether the entertainment cooperative memberships would constitute a "security" under the Idaho Securities Act ("Act").

It is our understanding that the entertainment cooperative ("Co-op") intends to bring music entertainers to the Boise area for the benefit of its members and the general public. Memberships would be sold for a one-time fee of \$75. Of this fee, \$25 would be allocated towards the operational costs of the Co-op. The remaining \$50 would be distributed to other members as payment for their Co-op recruitment efforts. Tickets not sold to Co-op members would be offered to the general public.

Benefits to Co-op members include:

- 1) Voting rights pertaining to the type of entertainment that should be booked.
- 2) 10% discount on general ticket admission price.
- 3) Right to purchase tickets ahead of general public and other Co-op members based on pre-recorded membership preferences.
- 4) Payment for Co-op recruitment efforts.
- 5) Payment of a portion of the total ticket sales purchased by individuals recruited by the member to join the Co-op.

Rule 300.03(b) of the Act allows for the application of the "risk capital" test in order to ascertain whether an investment would meet the definition of a "security" pursuant to the Act.

The elements of the "risk capital" test under Rule 300.03(b) require:

- 1) An investment that is subject to the risks of the enterprise;
- 2) An expectation of a benefit above the value paid;
- 3) Investor does not have the right to exercise practical and actual control over the managerial decisions of the enterprise.

Based on your representations and our application of the "risk capital" test, it appears that the

Banks & Savings Banks (208) 332-8005
Credit Unions (208) 332-8003
Securities (208) 332-8004
Money Transmitters (208) 332-8004

PHONE: (208) 332-8000
FAX: (208) 332-8098
Director's Fax: (208) 332-8097
Securities Fax: (208) 332-8099

Supporting Services (208) 332-8001
Mortgage Companies (208) 332-8002
Finance Companies (208) 332-8002
Collection Agencies (208) 332-8002

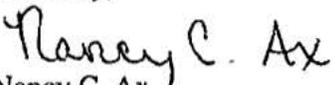
EQUAL OPPORTUNITY EMPLOYER

membership interests would be considered a "security" under the Act. Please be aware that our conclusion is based solely on the facts and circumstances presented in the February 19, 2002 letter. Should the facts change or be altered in a material way, our view may be different.

In the event you disagree with our conclusion, please provide a written explanation of your position by April 12, 2002.

If you have any questions regarding this matter, please contact the undersigned.

Sincerely,


Nancy C. Ax
Securities Analyst

RECEIVED

FEB 22 2002

DEPARTMENT OF FINANCE

ATTORNEY AT LAW

February 19, 2002

Department of Finance
Attn: Securities Division
HAND DELIVERY

Re: Declaratory Ruling

Dear Staff:

By way of introduction, my name is _____, and I represent a client who is interested in establishing an entertainment cooperative. The client will be selling membership in the cooperative and requests a Declaratory Ruling as to whether or not the membership sales will constitute a "security" as that term is used in Idaho law. Enclosed please find a check in the amount of \$50 to cover the fees.

The facts are this. The entertainment cooperative will bring music entertainers to the Boise area to put on shows/productions. Membeships will be sold for a one-time fee of \$75. Of this cost, \$25 will go to the coop for operational costs, \$25 is given to the member who sponsors the new member and \$25 will be distributed downline based upon certain percentages. This is multi-level marketing as follows: the first level receives \$25 per member sponsored up to unlimited members, the next level receives \$10 per member sponsored up to unlimited members, the next level receives \$5 per member sponsored up to unlimited members, the next level receives \$4 per member sponsored up to unlimited members, the next level receives \$3 per member sponsored up to unlimited members at which time no more commissions are paid. Additionally, members will receive a small percentage of the ticket sales ultimately purchased by the members in their particular downline. These commissions will either be paid in cash or redeemable in tickets to coop sponsored events.

In addition to commissions, members receive the following benefits. The members will vote upon which type of entertainment group that they would like the coop to bring to the area. Additionally, when members sign up, they will identify their favorite music choices, ranking them from 1 to 12. Their chosen music preference, members of the coop will be given the first

12 FEBRUARY 2002 DECLARATORY RULING REQUEST-1

opportunity to acquire tickets to any particular event before the event is marketed to the other coop members. After all coop members have been given a chance at early seat selection, the remaining tickets will be marketed to the general public. The advance ticket selection available to the coop members will be approximately 48 hours. Additionally, coop members will receive a %10 discount on the general admission price.

If you need additional information, then please do not hesitate to contact me.

Very truly yours.

Encl.