

1984 WL 249797 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 9, 1984

***1 RE: American Hardware Supply Company**

Mr. Stanley V. Lewis
Deputy Securities Commissioner
816 Keenan Building
Columbia, South Carolina 29201

Dear Stan:

You have asked for an opinion as to whether the above company must register its sale of stock as a security. I would advise against issuing public opinions on such matters as once a public opinion is issued, it has a precedential effect. I believe we would prefer to do as the SEC and simply give a no-action letter which reserves our right to change our mind.

If you want confidential legal advice as to whether you would be likely to prevail if you were to have to litigate this matter, I can tell you that it would, at best, be a guess. In view of our court's opinions in O'Quinn and Hullander, it is my opinion that our courts are not always going to follow federal precedent. I believe in a case such as this one, our courts would place considerable weight on your expertise in this area. Finally, I believe Hullander indicates our court would rule that stocks are securities regardless. Thus, I believe a requirement of registration would be supportable. The question, which you must decide, is whether the public interest is better served by trying to force registration or by giving a no-action letter which leaves the issue open until such time as there is a need to decide it. Quite frankly, in view of the SEC's position, I would think you should seriously consider issuing a no-action letter.

With best regards,

C. Richard Kelly
Assistant Attorney General

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