

44-1844(4)

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COMMISSIONER

ARIZONA CORPORATION COMMISSION

May 3, 1990

James W. Zeeb, Esq.
Law Offices of Hecker & Phillips
Rockwell Building
405 West Franklin Street
Tucson, Arizona 85071

RE: Rolling Hills Golf Course, Inc. -
Request for No-Action Letter

Dear Mr. Zeeb:

On the basis of the facts set forth in your letter of April 3, 1990 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona if Rolling Hills Golf Course, Inc. (the "Corporation"), elects not to exercise its right of first refusal as set forth in your letter.

The Securities Division is not taking a position regarding the shareholders' exempt status pursuant to A.R.S. § 44-1844 (A) (4).

As this position is premised on the facts set forth in your letter, it should not be relied upon for any other set of facts or by any other person.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:saa

Enclosure

LAW OFFICES
HECKER & PHILLIPS

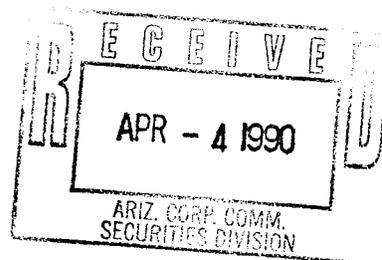
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April 3, 1990

Mr. Dee Riddell Harris
Director of Securities
Arizona Corporation Commission,
Securities Division
1200 West Washington
Suite 201
Phoenix, Arizona 85007



Re: Rolling Hills Golf Course, Inc. -
Request For No-Action Letter

Dear Mr. Harris:

This office represents Rolling Hills Golf Course, Inc. (the "Corporation"), which owns and operates the Rolling Hills Golf Course in Tucson, Arizona. In March, 1972, the Corporation submitted a petition for exemption by special order pursuant to Section 44-1846, Arizona Revised Statutes (the "Petition"), seeking an exemption for the sale of 298 shares of common stock in the Corporation. The Petition subsequently was amended to seek exemption for the sale of 400 shares of common stock.

Of the 400 shares, 266 represented shares that had been sold prior to the filing of the Petition, while the balance were to be sold to a restricted group of offerees meeting the following qualifications:

(1) They had to be bona fide residents of the State of Arizona; and

(2) They had to own real property in the real estate subdivision known as Rolling Hills, Tucson, Pima County, Arizona, or any neighboring subdivision thereof; or

(3) They had to be a regular user of the golfing facilities at Rolling Hills Golf Course, Inc.; and

(4) They had to purchase at least two (2) shares at \$500 per share but no more than four (4) shares at \$2,000, payment to be made in full in cash; and

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(5) In the event of sale of said shares the Corporation would have first right of refusal to repurchase said shares (the "Right of First Refusal").

A special order granting the Petition was issued on March 20, 1972 (the "Special Order"), which incorporated the terms of the Petition as the requirements for meeting the exemption. Copies of the Petition, the Amendment to the Petition and the Special Order are enclosed herewith. The Corporation sold all of the shares specified in the Petition, and each of the stock certificates included a legend specifying the Corporation's right of first refusal to purchase the shares. The Corporation has no current plans to issue additional stock.

Over the years, individual shareholders have transferred their shares, but to the knowledge of the Corporation's officers, shares were not being transferred to persons outside the class of persons specified in the Special Order ("Non-Qualifying Persons"). However, the Corporation has recently received a request to reflect a transfer on its records of shares sold to individuals who are not residents of the State of Arizona, although apparently the transferees do spend a period of time in Tucson during each year. The Corporation in no way encourages resales by existing shareholders, nor does it play any role in assisting any resales.

The officers and directors of the Corporation are unclear about any obligations that the Corporation may have to repurchase shares that have been sold to Non-Qualifying Persons. Consequently, the Corporation requests a determination from the Securities Division on whether the Corporation violates the requirements of the Special Order pursuant to which the stock was originally issued, or the provisions of A.R.S. §44-1841, by failing to exercise its right to repurchase shares offered by existing shareholders to Non-Qualifying Persons.

My review of the situation leads to the conclusion that the Corporation does not violate the terms of the Special Order, or the provisions of A.R.S. §44-1841, by failing to exercise the Right of First Refusal that it has pursuant to the terms of the original stock issuance. First, although the Special Order required the Corporation to retain the Right of First Refusal, the Special Order does not require the Corporation to repurchase any shares that are offered to Non-Qualifying Persons. Moreover, circumstances might exist, such as a lack of funds, that would prevent the Corporation

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from repurchasing its stock. Further, the passage of a substantial period of time compels a conclusion that the initial offering is completely unrelated to current resales of the stock by existing shareholders. Rather, the sales by existing shareholders of the Corporation represent isolated transactions by such shareholders, and in no way benefit, either directly or indirectly, the Corporation. Accordingly, I believe the sales by the shareholders are exempt from registration pursuant to A.R.S. §44-1844(A)(4).

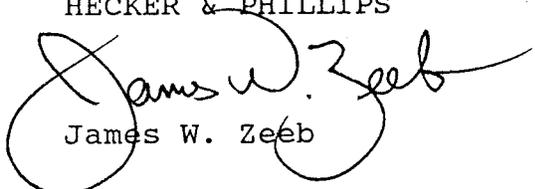
I respectfully request that the Securities Division concur in the opinions expressed herein.

You should be aware that one of the directors of the Corporation discussed this situation with the Division's "attorney-for-the-day" in February, who indicated that the Corporation would be required to repurchase shares being sold to Non-Qualifying Persons. I was not a party to that discussion, so I am uncertain exactly how the issues were framed or what constituted the basis for the resulting answer. In any event, I believe my conclusions outlined above reflect the correct application of the law.

Thank you very much for your cooperation in this matter.

Very truly yours,

HECKER & PHILLIPS



James W. Zeeb

JWZ:tlj
Encl.

cc: Board of Directors,
Rolling Hills Golf Course, Inc.