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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
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February 18, 1992

Scott W. Ruby, Esq.
Gust Rosenfeld
Valley Bank Center
201 N. Central Ave., Ste. 3300
Phoenix, Arizona 85073-3300

RE: Roman Catholic Church Diocese of Phoenix
A.R.S. § 44-1843(A) (6)

Dear Mr. Ruby:

On the basis of the facts set forth in your letter of February 4, 1992, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

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:MGB:wjw

Attachment

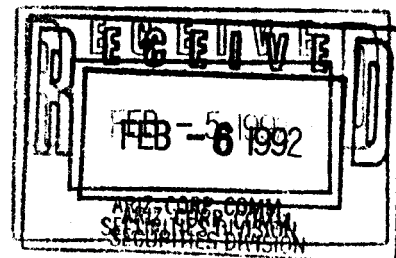
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February 4, 1992

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



Re: \$10,287,000 Principal Amount of The
Roman Catholic Church Diocese of
Phoenix, General Obligation Debentures,
First Series 1992
Our File No. 003608-00007

Dear Dee:

Enclosed is a check for \$200 representing the required fee for processing of "no action" requests.

The Roman Catholic Church Diocese of Phoenix (the "Diocese") proposes to offer its Series 1992 debentures for public sale. The proceeds of the debentures would be used exclusively, absent payment of some costs of issuance, to retire prior to maturity debentures issued by the Diocese in 1987 and 1989. The Series 1992 debentures are being issued to take advantage of the current low interest rates, i.e., the Diocese is refinancing a portion of its existing debt. The 1987 and 1989 debentures received "no action" letters from the division.

A question is raised as to whether or not the debentures would be securities exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842 by virtue of subsection 6 of A.R.S. § 44-1843.

Substantially the same question has been posed to the division in connection with several prior offerings by the Diocese. In the past, the division has issued letters advising the Diocese that no enforcement action for violations of the registration provisions of the Securities Act of Arizona would be recommended. But for date, amounts, rates and use of proceeds the proposed offering is identical to previous debenture offerings by the Diocese.

The proposed debentures of the Diocese should be exempt securities under § 44-1843, subsection 6, for the reasons hereafter set forth.

Subsection 6 of § 44-1843 establishes that, as a general rule and with certain exceptions, securities issued by a corporation organized and operated exclusively for religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual, are exempt from registration. At last count, at least 40 other states have such a general exemption from registration requirements for securities issued by such organizations. The Diocese meets the criteria to come within this general rule.

The Diocese is a corporation sole organized and existing under Title 10, Article 15, Arizona Revised Statutes. Under those statutory provisions, a corporation may be organized by a person vested with the legal title to property of a church or religious society in conformity with its constitution, canons, rites or regulations. A.R.S. § 10-422. The primary purpose of a corporation sole is to have perpetual succession. A corporation sole has power to acquire, possess, hold, sell, rent or otherwise dispose of property; to borrow money and give written security therefor, and secure payment thereof by mortgage or other lien. A.R.S. § 10-424.

In the event of the death, resignation or removal of the person who is a corporation sole, that person's successor in office is vested with title to all property held by the predecessor as the corporation sole, with like power and authority over the property.

The Diocese, as a corporation sole, is the individual in whom legal title to the property of the Roman Catholic Church within the geographical boundaries of the Diocese is vested in accordance with the canon law of the Church. Under that law, that individual is the Bishop of the Diocese of Phoenix. As an official arm of the Roman Catholic Church, the Diocese is an organization described in and exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

The real property owned by the Diocese includes parishes, missions, high schools and elementary schools. The day-to-day management of the properties of the Diocese is conducted by various Church officials, advisors, members and committees.

Because the Diocese also holds title to three cemeteries, a question might be raised as to whether the general rule exempting securities of such an organization from registration is available, given the language making certain exceptions to that exemption at the end of § 44-1843, subsection 6. This provision, which appears to be unique among states which have an exemption from registration for securities issued by religious and charitable organizations, applies to "securities issued by a nonprofit organization which is engaged in, intends to engage in, controls, finances, or lends funds or property to other entities engaged in the construction, operation, maintenance, or management of a hospital, sanitarium, rest home, clinic, medical hotel, mortuary, cemetery, mausoleum or other similar facilities." The basic exclusionary language quoted above was added in 1968 (Laws 1968, Chapter 186, Section 1) and was modified further in 1976 (Laws 1976, Chapter 173, Section 3).

This exclusion from the general exemption for nonprofit organizations appears to have been a response to situations such as that described in Securities and Exchange Commission v. Children's Hospital, 214 F.Supp. 883 (D. Ariz. 1963). In such situations, even though the sponsoring corporation may be organized for nonprofit purposes, there may be developers or operators of the facility which have a profit motive.

The profit motive of a developer or of a profit-seeking entity which will operate the facility distinguishes such situations from the circumstances contemplated by the general rule of § 44-1843, subsection 6. The general rule envisions a nonprofit organization issuing securities for eleemosynary purposes. The lack of an opportunity for personal gain tends to obviate the need for the safeguards intended to be provided by the registration process.

In addition, offerings or securities may be made by a nonprofit organization to enable it to develop and operate a health care facility, cemetery or similar facility, with the payments to holders of the securities being dependent upon the financial success of the particular facility being financed. In such financings, the securities are often secured by liens upon a specific pledge or assignment of the revenues from the health care or cemetery facility being built or expanded with the funds raised by the securities offering.

Where payments to security holders are dependent upon the success of the particular facility being financed to produce net revenues, the lack of expertise of a non-profit organization

in operating such facilities and the lack of the broad support of all income of the nonprofit organization may be significant and may not receive appropriate disclosure.

The factors which appear to have led to enactment of the exclusion from the exemption are not present in this instance.

As previously mentioned, the proceeds of the debentures of the Diocese will be used to repay the Diocese's existing debentures issued in 1987 and 1989. A small portion of the proceeds will be used to pay for financing costs. All proceeds of the debentures being repaid by these debentures were used for properties and projects that gave rise to no profit to any individual entity. Both the debenture offerings (1987 and 1989) received "no action" letters from the division.

The debentures will be general unsecured obligations of the Diocese, i.e., the Roman Catholic Church within the geographic area of the Diocese. There is no specific pledge or assignment of revenues from any particular source. There is no lien upon any property of the Diocese, much less on property or facilities of the particular types mentioned in the exclusionary language of the statute. Those who acquire the debentures will not be looking toward nor will they be dependent on the financial success of any particular activities of the Church as a source of payment.

Contributions and grants are the primary sources of funds for the Diocese. Net revenues generated by the Catholic cemeteries in the Diocese are not principal sources of income.

For the foregoing reasons, we submit that the language of § 44-1843, subsection 6, creating an exclusion from the general rule of exemption from registration for securities of nonprofit organizations does not and was not intended to apply to the Diocese or to securities of the Diocese such as those involved here. The exclusionary language was intended to require registration of securities of "nonprofit" organizations where a substantial third-party profit motive is present, or where security holders are dependent upon the financial success of particular facilities. Such factors are not present in this instance. The debentures issues by the Diocese should be exempt from registration.

If there are any questions, please contact us. If it appears that you will be unable to concur in our views, we would appreciate the opportunity of a meeting to discuss the matter

Mr. Dee Harris

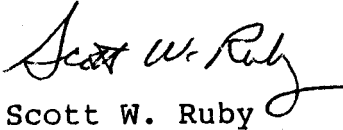
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February 4, 1992

before you reach a final conclusion. It would be greatly appreciated if this matter could be considered on an expedited basis in that the Diocese would like to close the offering on March 1, 1992. Thank you.

Very truly yours,

GUST ROSENFELD



Scott W. Ruby

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