

April 16, 1999

Mr. Robert L. Stiles  
25 Highland Park, Suite 100  
Dallas Texas 75205

RE: Executive Producer Agreement  
Request for No Action No. 99-03-SD

Dear Mr. Stiles:

This Department is in receipt of your letter dated April 1, 1999, and attached "Executive Producer Agreement" (the "Agreement"). In your letter you request the Department's response to the question whether "there is anything special I need to do with the State of Arkansas if I decide to take on the Arkansas Film Project?" I am assuming that your reference is more specifically whether you must register as a broker dealer or agent of the issuer in order to raise money for the film project referenced in your letter. Therefore, your letter is being treated as a request that the Staff of the Department recommend to the Commissioner that no enforcement action be recommended if the actions contemplated in your letter and the Agreement are conducted without registration with this Department.

The facts as I understand them are as follows:

You will serve as Executive Producer pursuant to the Agreement regarding a film to be shot in Arkansas. You state in your letter that you do not consider yourself to be an agent or broker dealer in regard to the project, that you will solicit no money on behalf of the film maker, that you will merely introduce investors [to the film maker?], and that you are paid by the film producer regardless of whether or not the film gets funded. However, several of these statements appear to be in direct conflict with the provisions of the Agreement, specifically paragraphs C., 1.1, and 1.2 pertaining to obtaining "financing" from "investors", paragraphs 3.1 and 4.1 pertaining to the compensation you are to receive under the Agreement, and more generally, the entire Agreement, which appears to contemplate the selling of interests in the film to investors for which you will be paid a fee.

Although it is impossible to determine for certain from the information that you have provided, it appears that interests in the film or the rights to any profits derived therefrom are to be sold to individual investors. As such, the arrangement appears to constitute an "investment contract", i.e., the payment of money or moneys worth in a common venture with the expectation of profits to be derived through the acts of others. An investment contract is a "security" as that term is defined in Ark. Code Ann. § 23-42-101(15). Further, it appears from the terms of the Agreement that you will be offering such interests to investors, and that you will be paid a fee contingent upon the sale of interests to investors. Ark. Code Ann. § 23-42-101(2)(A) defines an "agent" as any individual who represents an issuer in effecting or attempting to effect purchases or sales of securities. Neither the statement in your letter that you do not consider yourself an agent with regard to the project, nor the provisions of paragraphs 6.1 and 7.1 of the Agreement which attempt to disclaim the nature of the transaction and to limit the relationship between you and the production company, respectively, is effective to change the substance of the arrangement under the Agreement. Under the Agreement, it appears that Four

Winds Pictures, the Three of Hearts, Inc. is an issuer of securities and that you are going to serve as an agent of the issuer.

Left unresolved from the information provided is whether interests in the film are to be offered either to residents of Arkansas or from within this state. If offers are made only from locations outside this state and are not made to any residents of this state, then the fact that you may be an agent for the issuer is of no consequence to this Department (although I suspect you will be required to register in whichever state you attempt to sell into or from). However, if sales are made from Arkansas or to Arkansas residents, you need to register with this Department as an agent of the issuer, and Four Winds needs to register the offering (or obtain an exemption from registration) with this Department. Failure to register under such circumstances subjects both the seller of securities and the issuer to criminal and civil penalties under the Arkansas Securities Act, Ark. Code Ann. § 23-42-101, *et seq.* Accordingly, I can give you no assurance that the Staff of the Department would recommend to the Commissioner that no enforcement action be taken if the actions contemplated in your letter and the Agreement are conducted without the appropriate registration in this state.

Should you have other information regarding this transaction supporting the contention that no security is to be offered by or on behalf of the production company, we would be glad to consider it. However, based upon the information that you have provided, it appears that both you and the issuer of the offering need to seek registration or an exemption. Should you wish to seek registration, please contact Tom Bull at the number appearing above. Should the issuer desire to seek registration or exemption, it is probably advisable that its legal counsel contact Felicia West at the number listed above.

Please note that the opinion expressed herein is based solely upon your letter and the Agreement, and applies only to the particular activities described herein. Different facts or circumstances might require a different result.

If you have any other questions regarding this matter, you may contact me at (501) 324-8686.

Yours truly,

John E. Moore, Jr.

Staff Attorney