



A photograph of Maple Hill's residential district, looking west across Main Street, taken from the top of a grain elevator, between 1900 and 1910.

Blue Sky, or Buyer Beware: The Moun Day Investment Scheme Tests Kansas's Pioneering 1911 Regulation

by David Ress

The land dealer and stock-and-bond promoter from Topeka hit the big time, finally, on two desert creeks, the Gallinas and Rio Conchos, in the upper reaches of New Mexico's Pecos River valley on the 164,000-acre Antonio Ortiz land grant. The area had remained unsettled since the grant of land in 1819; there was plenty of land to subdivide and sell to dreamers of western wealth back in Kansas. "These valleys lying nestled up near the mountain ranges are the garden spots of the world when water is put on them and the American Sugar Manufacturing and Refining company is going about the project of irrigating," an anonymous, supposedly first-person account told readers of the *Topeka State Journal* in the summer of 1911. Would-be buyers were in luck, too, the article said, because one Don A. Moun Day, a familiar Topeka figure and fringe player in Kansan land markets had joined—actually led and organized—the New Mexican venture. He was ready and willing to help farmers or investors interested in buying Ortiz grant land.¹

The article, almost certainly written by Moun Day himself, assured readers that the sugar-refining company in New Mexico would not only pay for the irrigation system but also agree to pay sugar beet growers \$5 a ton for their entire crop for five years. With irrigation, the anonymous writer promised, the land would yield forty-five tons an acre. That \$225 an acre net was an almost unimaginable return for Kansan wheat growers, who at the time were seeing returns averaging a bit more than \$12 an acre. If farmers wanted to try other crops, alfalfa yields of six to eight tons an acre could be sold for \$10 a ton, and apple orchards for the more patient growers would eventually bring in \$300 an acre. Meanwhile, in the lower reaches of "far famed Pecos Valley," into which Gallinas Creek eventually flowed, "land values have increased enormously," the article carefully pointed out. The five-acre lots Moun Day touted sounded almost too good to be true. As of course they were.²

David Ress is an honorary research associate at the University of New England (Australia). He previously published an article on wheat and tenant farming in our Winter 2021–22 issue.

1. "Come Go Along," *Topeka State Journal*, June 23, 1911. Moun Day's name is spelled variously as Moun Day and MounDay in contemporary accounts; in legal papers, it is Moun Day.

2. "Come Go Along." The Ortiz grant details come from Jocelyn Jean Bowden, "Private Land Claims in the Southwest" (master's thesis, Southern Methodist University, 1969), www.southwestbooks.org/grants_sanmiguel.htm. Wheat income is calculated from wheat acreage and total value of the 1909 harvest reported by the U.S. Bureau of the Census, *Census of 1910*, vol. 6 (Washington, DC: U.S. Government Printing Office, 1913), 546.

Moun Day was far from the first to pitch dreams of easy wealth to struggling Kansan farmers and business owners. Irrigation was a Kansan panacea dreamed of for decades; as farmer P. L. Lancaster told the Sherman County Farmers Institute, "Irrigation is our quickest way out, our surest way out, our only way out."³ Yet in 1911, as Moun Day sold his get-rich-quick fantasy of New Mexican sugar lands, Kansas state Banking Commissioner Joseph N. Dolley decided it was time for aggressive state action to protect Kansans' savings. Moun Day's promised wealth from irrigation would have a compelling appeal in semiarid Kansas. So would Dolley's view that Kansans such as his neighbors in Maple Hill—population 277 in 1910—needed someone more expert than themselves when it came to investment.⁴

Dolley's neighbors had, after all, turned to him for financial advice as much as for credit in his days as grocer turned banker in that small town. After he moved to Topeka to take up the commissioner's post, Dolley heard from a former neighbor about the New Mexico land scheme, and he pushed legislation in 1911 that put in place the nation's first law to regulate the sale of securities, what became known as a Blue Sky Law. "An old farmer I used to know . . . sold his Kansas farm and had the money in the bank," Dolley would recall later. "A couple of smooth gentlemen came along and persuaded him to invest the money in developing a magnificent tract in New Mexico that was just about to be irrigated. He invested." However, after several months and none of the dividends promised, the farmer went to New Mexico to see for himself and "climbed some bare, mountainous hills until his wind gave out. The land he'd invested in was still higher up. The only way to irrigate it would be from the moon. . . . I made up my mind I'd do something."⁵

3. Craig Miner, *Next Year Country: Dust to Dust in Western Kansas, 1890–1940* (Lawrence: University Press of Kansas, 2006), 85.

4. U.S. Bureau of the Census, *U.S. Census of Population: Reports by States, 1910*, vol. 2, Kansas (Washington, DC: U.S. Government Printing Office, 1913), Table 2, 655.

5. Will Payne, "How Kansas Drove Out a Set of Thieves," *Saturday Evening Post*, December 2, 1911, 3.

Moun Day was the first to challenge this law in court. Kansas state court judges upheld the law and the authority it gave the bank commissioner to ban the sale of stocks or bonds that the commissioner felt were unfair to investors. Moun Day, and the federal judges who overturned other states' Kansas-model Blue Sky laws, argued that Dolley's approach was unconstitutional. The Kansas act was, in fact, a far more heavy-handed approach to regulation than the Securities Act of 1933, passed in the wake of the stock market crash of 1929 and the Pecora Committee's revelation of unseemly Wall Street dealings. There was something about Kansas, it seems.

That something, I argue, was the bundle of expectations Kansans in the early twentieth century had when investing in business. Moun Day's story, discussed for the first time since it splashed across the front pages of Kansas newspapers in 1913, should make clear that the Blue Sky Law reflected a belief that investment ought to yield assured and steady income, essentially risk-free—to be something like a bank account (especially after Dolley's success leading the legislature to enact a deposit insurance scheme). The Blue Sky Law also revealed a regulatory philosophy that arose almost inevitably from the necessities of daily commerce in tiny communities such as Commissioner Dolley's Maple Hill in Wabaunsee County, where he settled after a shipwreck made him rethink life as a sailor. In such isolated, self-contained miniature economies, where Dolley set up shop first as a grocer and eventually as a banker, the great legal shibboleth of caveat emptor (buyer beware) was irrelevant. Over time, after all, dealings with your neighbors are not possible if you must always beware of them.

Dolley's aim with the Blue Sky Law was to ensure that an investment offer could be trusted, although in arguing for his proposal, he always said his purpose was to prevent fraud. Trust was what Moun Day sold; a false trust that he could organize an economic complex of irrigated farmland and industrial processing of the products of that land. The Blue Sky Law investigation of his plans, which

shut down Moun Day's operation and led to a federal criminal conviction sparked by state action, have not previously been examined in the limited historiography of state securities regulation. Moun Day's case belies the usual historiographic view that Blue Sky laws were ineffective and that they interfered inappropriately with capital markets. The Kansas Blue Sky Law shut down Moun Day's abuse of Kansans' trust at the moment he was turning to outright fraud; it would do the same for many other dubious projects.

State securities laws, though now largely superseded by the U.S. Securities Act of 1933 and the Securities Exchange Act of 1934, are still on the books across the nation and are still known as Blue Sky laws. Most, however, no longer give state regulators the same merit review powers that Dolley's law did. Dolley suggested the name at a Kansas Senate hearing on his idea in 1911 after recalling how, in the 1890s, he was among the group of business owners and farmers in Maple Hill who contracted with a flimflam man from Chicago to bring rain clouds to that summer's endless, burning blue skies. "They arrived at Maple Hill with two barrels of chemicals, a string of iron pipe and some mysterious mechanical doodad" and sternly warned everyone to stay away. All that could be seen was "their iron pipe pointed toward the sky" and its "light milk colored spray," Dolley recalled. Maple Hill watched for four days and nights, but there was no sign of rain. On the fifth day, Dolley led a delegation to the rain makers' work site and discovered that the alleged rain makers had fled in the night. Years later, Dolley told an interviewer that when he had been asked what to call the securities regulation bill, "Remembering our experience with the blue sky artists in trying to make rain, I suggested 'the blue sky law.' The name stuck."⁶

The 1911 Kansas law empowered the bank commissioner to ban sales of stocks and bonds that he deemed unsuitable for sale to the public. The law



A studio portrait of Joseph Norman Dolley.

authorized the commissioner to make a judgment about the securities, a merit review by a self-designated expert. This is a much higher bar than that set by later federal securities laws, beginning with the 1933 act, which (as the Enron case showed) merely require disclosure *without* providing that regulators ensure that the disclosures are accurate or that the offer is fair to buyers. In effect, it is now up to investors to perform their own merit reviews. Fairness to the investor was the Kansas Blue Sky Law standard, though it is not mentioned in later federal securities laws. Within two years, eleven states and the province of Manitoba enacted Blue Sky laws, modeled on the Kansas statute's ban of not only fraudulent offerings but also securities that official review determined would be unfair to investors and that did not provide a reasonable

6. "Blue Sky Law Named after Drouth," *Topeka State Journal*, October 30, 1935, 9E.

chance to see their savings grow.⁷ Another nine states enacted narrower laws allowing the ban of offerings that state officials deemed to be fraudulent.⁸

The Kansas law required companies to file their business plans, copies of all contracts necessary to their business, physical copies of the securities proposed for sale, and a detailed report of financial condition for the bank commissioner's review. Once authorized to sell shares or bonds, a company had to file twice-yearly reports of financial condition, balance its books once a month, and allow stockholders, potential investors, and the commissioner's office to inspect those books. It was a felony to "knowingly or willfully subscribe to or make or cause to be made false statements" or a false entry in a company's books intended to deceive examiners. Violators were subject to prison terms of up to ten years and hefty fines of up to \$10,000. Simply selling unregistered securities, even from a legitimate company, was a criminal offence that could bring a ninety-day spell in jail. The law made investment bankers and other dealers in securities, whether based in Kansas or in any other state, subject to the same type of periodic examination that the commissioner's office conducted on state banks. The cost of such examinations, including travel expenses, fell on the

7. Act of May 18, 1912, Arizona Session Laws ch. 69, 338 (1912); Arkansas Securities Act, Arkansas Acts No. 214 § 6, 904 (1913); Investment Companies Act, California Statutes ch. 353, 715 (1913); Idaho Securities Act, Idaho Session Laws ch. 117, 454 (1913); Act of May 2, 1913, Michigan Public Acts No. 143, 243 (1913); Act of March 13, 1913, Montana Laws ch. 85 § 9, 367 (1913); Supervision of Investment Companies Act, North Dakota Laws ch. 109, 137 (1913); Act of April 28, 1913, Ohio General Laws No. 103 § 16, 743 (1913); Act of March 14, 1913, South Dakota Laws ch. 319, 522 (1913); Act of September 27, 1913, Tennessee Public Acts ch. 31, 500 (1913); Act of February 6, 1913, West Virginia Acts ch. 15, 114 (1913). Manitoba's law was Sale of Shares Act, 2 Geo. 5, ch. 75 (1913).

8. Act of May 20, 1913, Florida Laws ch. 6422 (1913); Act of August 19, 1913, Georgia Laws No. 263, 117 (1913); Act of April 19, 1913, Iowa Laws ch. 137, 137 (1913); Act of April 7, 1913, Missouri Laws 112 (1913); Act of April 21, 1913, Nebraska Laws ch. 199, 603 (1913); Act of March 12, 1913, North Carolina Session Laws ch. 156, 249 (1913); Act of February 28, 1913, Oregon General Laws ch. 341, 688 (1913); Act of August 21, 1913, Texas General Laws ch. 32, 66 (1913); Act of August 21, 1913, Wisconsin Laws ch. 756, 1108 (1913).

examined firm. If the commissioner determined that a securities firm was insolvent, he could ask the state attorney general to sue for a court order to place the firm into receivership.⁹

Blue Sky laws barely emerge in the historiography of finance or twentieth-century U.S. politics.¹⁰ Those historians and legal scholars mentioning them take two main approaches. The first is that the Kansas law and the Blue Sky laws in the states that adopted the Kansas model interfered unduly with essentially well-functioning markets that were adequately matching variously risky securities with the variously risky appetite for risk of different buyers. By interfering in the market, Kansas-model Blue Sky laws kept legitimate securities from the hands of people who might want to buy them, these analyses argue. Blue Sky laws also hindered companies seeking capital, these analyses contend.¹¹ Yet the Kansas Casualty and Surety Company, for instance, was able to sell its shares to 950 people, including 125 bankers and business owners, who were willing to take the risk of investing in it after winning Blue Sky Act approval in 1912,

9. Act of March 10, 1911, Kansas Session Laws ch. 133 § 3, 211 (1911); §§ 8–9, 213–14; § 12, 215; § 13, 215–216; § 10, 214.

10. H. Craig Miner, *Kansas: The History of the Sunflower State, 1854–2000* (Lawrence: University Press of Kansas, 2002). Miner only briefly mentions the Blue Sky Law in listing some twenty reform bills passed in the early 1900s, without elaborating on what it did or noting that it was the first securities regulation law in the United States. He limits discussion of Dolley's nationally important career to a passing mention of his role as speaker during the debate over primary elections (204, 226).

11. Jonathan R. Macey and Geoffrey P. Miller, "Origin of the Blue Sky Laws," *Texas Law Review* 70 (1991): 348–97; Paul G. Mahoney, "The Origins of the Blue-Sky Laws: A Test of Competing Hypotheses," *Journal of Law & Economics* 46, no. 1 (April 2003): 229–51; Louis Loss and Edward Cowett, *Blue Sky Law* (Boston: Little, Brown, 1958); James Mofsky, *Blue Sky Restrictions on New Business Promotions* (New York: Matthew Bender, 1971); Daniel Holt, "Acceptable Risk: Law, Regulation, and the Politics of American Financial Markets, 1878–1930" (PhD diss., University of Virginia, 2008), 173–246. Holt argues that Blue Sky laws kept legitimate securities off the market and that doing so hindered capital formation in states such as Kansas. The key source for these histories is Thomas Mulvey, "Blue Sky Law," *Canadian Law Times* 36, no. 1 (January 1916): 39. Warren Hayden's speech on Blue Sky laws is in Investment Bankers Association of America, *Proceedings of the Organization Meeting and of the First Annual Convention of the Investment Bankers' Association of America* (Chicago: Investment Bankers Association, 1912), 139. Both were advocates for securities firms that felt the law hindered their marketing efforts.

even though its promised dividends were unlikely (it would go under within a decade).¹² Manufacturers' capital in Kansas grew by 129 percent between 1909 and 1919, compared to 116 percent in New York and 130 percent in Massachusetts, both financial centers that had emphatically rejected Blue Sky Law regulation as an unnecessary constraint. Over the same period, production output grew by 181 percent in Kansas compared to 163 percent in New York and 169 percent in Massachusetts.¹³

The second approach to the Blue Sky laws is that they were failed initiatives of the Progressive movement of the early twentieth century and an insufficient response to a real problem of fraud.¹⁴ Yet Blue Sky laws were never part of any Progressive platform. Several Progressive Republican legislators voted against Dolley's measure

12. The "Sure Profits for You" that Kansas Casualty promised were backed by the self-contradicting claim that even before beginning business, it was making an annual income of \$16,000 ("Sure Profits for You," *Topeka State Journal*, May 18, 1912). Based on its reported sales of stock to some 950 individuals, the average investment was \$287, well within the reach of the widows and small savers who critics of the Blue Sky laws would later insist were not the people who bought the speculative securities Dolley tried to ban ("Strong Endorsements of a Strong Institution by Strong Men," *Topeka State Journal*, September 9, 1912). The company never came close to paying stockholders what it promised before shutting its doors after a disappointing 1921. See *Annual Report of the Superintendent of Insurance of the State of Kansas for the Year Ending December 31, 1913* (Topeka: State Printer, 1914), 63; *Annual Report of the Superintendent of Insurance of the State of Kansas for the Year Ending December 31, 1914*, 64; *Annual Report of the Superintendent of Insurance of the State of Kansas for the Year Ending December 31, 1918*, 68; *Annual Report of the Superintendent of Insurance of the State of Kansas for the Year Ending December 31, 1921*, 68, 110.

13. Calculated from U.S. Census Bureau, *U.S. Census of Manufactures, 1920*, vol. 9 (Washington, DC: U.S. Government Printing Office, 1923), 450, 588, 970.

14. H. Edward Flentje and Joseph A. Aistrup, *Kansas Politics and Government: The Clash of Political Cultures* (Lincoln: University of Nebraska Press, 2010), 18, and Robert LaForte, *Leaders of Reform: Progressive Republicans in Kansas, 1910–1916* (Lawrence: University of Kansas Press, 1974), 109, 134 offer only brief mentions of the Blue Sky Act; Vincent Carosso, *Investment Banking in America* (Cambridge, MA: Harvard University Press, 1970) and Rick A. Fleming, "100 Years of Securities Law: Examining a Foundation Laid in the Kansas Blue Sky," *Washburn Law Journal* 50, no. 3 (Spring 2011): 583–610 see the Blue Sky Law movement as an expression of Progressivism. Joel Seligman, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance* (New York: Aspen, 2003), 45–46, and Benjamin Ginzberg, "Wall Street under the New Deal," *North American Review* 245 (1938): 69–70 dismiss Blue Sky laws as ineffective antifraud legislation.

in the state House of Representatives. Presidents Theodore Roosevelt and Woodrow Wilson both declared that they did not believe in interfering with individuals' decisions about managing their money. In the Kansas House, state Representative F. S. Wettack, a Progressive Republican from Coffeyville, complained that the bill "sought to substitute the brains of the bank department for the brains of the people." State Representative Robert Stone, a would-be leader of the Progressive faction in the GOP from Topeka, argued that the Blue Sky Law imposed paternalism that would not wash in down-to-earth Kansas.¹⁵ Though both parties' floor leaders whipped the measure hard—Republicans for, Democrats against—only 48 of 71 Republicans voted for the Blue Sky Law, while 16 of 53 Democrats ignored their whip to support Dolley's bill.¹⁶ Both the economists' and the Progressive movement arguments miss the point, I believe. Instead, Dolley's approach was rooted in rural Kansans' experience and expectations of commerce and investment and the small-town Kansan pattern of seeking advice from men like him.

Fantasies of easy wealth for early-twentieth-century Kansans focused on hopes for dividends married to many Kansans' lack of knowledge about basic business finance; this was what Moun Day tapped with his sales pitch of a New Mexican agricultural paradise. Telling readers of the *State Journal* of "a terrible journey of mud and misfortune" in western Kansas, framed by the newspaper's approving note that "no one in Topeka thrives on hard work and bad luck like Moun Day," he sold himself as an entrepreneur who had focused on stocks and real estate and who "reports things looking fine in the new state," in

15. Theodore Roosevelt, *Theodore Roosevelt: An Autobiography*, 2nd ed. (1913; repr., New York: Charles Scribner, 1922), 160; Woodrow Wilson, *The New Freedom: A Call for the Emancipation of the Generous Energies of a People* (New York: Doubleday, 1921), 61; "Goes with Rush," *Topeka State Journal*, February 8, 1911; "Kansas Legislators: Past and Present," State Library of Kansas, kslib.info/BusinessDirectoryii.aspx; "Get Busy Says He," *Topeka State Journal*, February 9, 1911.

16. Kansas House Journal, *17th Biennial Session* (Topeka: State Printing Office, 1911), 361.

contrast to Kansan conditions.¹⁷ Moun Day began bringing prospective land buyers out from Kansas to the Ortiz tract in 1910. His earlier efforts to sell contracts to residents of Las Vegas, New Mexico, downstream from the tract lands he was touting in Kansas, had not worked well. When he had tried with the locals, “some of these purchasers after investigations, decided they had made a poor investment, and made no further payments” on the contracts, the *Las Vegas Optic* newspaper reported.¹⁸ For Kansans, these outings involved a long train ride to Santa Rosa, New Mexico, and a thirty-mile automobile trip through flat desert scrubland to the higher, mountain-fringed Ortiz tract. This tract was just better-watered enough to seem lush in a hasty inspection after a long odyssey through the New Mexico desert.¹⁹

Moun Day’s only real business was not sugar, despite borrowing most of the name of the American Sugar Refining Co., which controlled 98 percent of the U.S. sugar processing capacity of the day. His business, called American Sugar Manufacturing and Refining Co., was merely involved in the sale of land contracts.²⁰ “I understood at that time and while making my payments . . . that I was dealing with the so-called ‘sugar trust,’” said Rev. G. O. Heide, a Baptist minister from Alta Vista, Kansas. “I understood that the American Sugar Manufacturing & Refining company was a big going concern . . . that they were going to invest a large sum of money in a sugar refinery there.” What Moun Day offered was not outright purchase of land but “clearance receipts” that entitled the buyer to a deed for an unspecified five-acre plot when the tract was subdivided. What people bought, that is, was a security in the same sense as a stock or bond: a claim on an asset, whether the income-generating assets of a company, a payment of interest from a

borrower, or a portion of an irrigation scheme’s land with the direct promise of income from the sale back to the scheme’s organizer of the produce of the land: in this case, those 45 tons of sugar beets at \$5 a ton.²¹

Moun Day was asking them to invest in what we now call a start-up and to do so in a venture in which he had invested almost nothing himself: a mere \$165 total for an option on the land.²² This was exactly the kind of venture, as much as any outright fraud, that Dolley targeted with the Blue Sky Law. Dolley believed the organizers of an enterprise needed to put significant sums of their own at risk before asking others to do so. Carl Peterson, director of the bank commissioner’s Blue Sky Law department, determined from digging into Moun Day’s balance sheets, income statements, and contracts that the offering failed to meet the Blue Sky Law’s fairness standard, eventually finding that the option had just expired.²³

In fact, it was the publicity over Moun Day’s lawsuit challenging the Blue Sky Law, filed in June 1913, and another immediately following contending that Dolley had defamed him, that led federal post office officials to begin to act. The post office, charged with enforcing federal mail fraud law, had never bothered to check on Moun Day. Reporting on Moun Day’s challenge to the Blue Sky Law, the *State Journal* sarcastically commented that his business “had reached proportions under which it threatened to pay dividends.” In Moun Day’s case, the newspaper noted, the combination of a not-yet-built refinery and promised contract farming (not surprisingly) was unlikely to generate any income for investors.²⁴ That meant, in Dolley’s view and under Blue Sky Law standards, that Moun Day’s securities were inappropriate investments for the public. The state began

17. “Local Mentions,” *Topeka State Journal*, May 15, 1912.

18. “Don A. MounDay, Promoter of New Mexico Lands, Arrested by Government in Topeka,” *Las Vegas (NM) Optic*, July 28, 1913.

19. “Goes with Rush.”

20. Leonard Arrington, *Beet Sugar in the West: A History of the Utah-Idaho Sugar Company, 1891-1966* (Seattle: University of Washington Press, 1966), 54-55.

21. “The Case Grows,” *Topeka State Journal*, July 30, 1913.

22. “Don A. MounDay and Wife Arrested Today,” *Topeka State Journal*, July 25, 1913.

23. “No State Worry,” *Topeka State Journal*, June 24, 1913.

24. “Must Face Trial,” *Topeka State Journal*, October 17, 1913; “No State Worry”; “The Blue Sky Law,” *Topeka State Journal*, August 8, 1913.

investigating because Moun Day never obtained a permit to sell his securities, in violation of the Blue Sky Law. A Kansas official uncovered the fraud when his investigation revealed that Moun Day had lied about the status of the land and its water rights. Post office inspectors uncovered the additional information that prompted federal mail fraud charges. Nevertheless, Kansas regulators went after the promoter before they knew about any fraud.

Thousands of Kansans—one estimate from Moun Day’s lawyer said as many as sixteen thousand—bought the contracts after the promoter shifted his sales effort from New Mexicans to Kansans in 1911. Few actually went to New Mexico to examine the land. The pace of sales accelerated through 1912, but by 1913, “with their money invested, the purchasers began to inquire of MounDay when the ‘opening’ might be expected.” Contract holders, concerned by continued postponements of assuming possession, kept pressing Moun Day for action. He responded by saying that he did not directly control when the tract would be subdivided so that they could get their land, though he implied that he had behind-the-scenes influence. L. D. W. Moun Day, the promoter’s wife, told one anxious contract holder, Reverend Heide, that they could not promise anything definite about the opening “because they were liable to get into trouble if they did and get in to the pen”—the penitentiary—a suggestive piece of slang. In the end, while her husband was jailed, Mrs. Moun Day was fined \$300.²⁵

Also reassuring was the impressive list of supposed backers Moun Day said he had lined up, including Senator Charles Curtis (later vice president) and Kansas Secretary of State Charles Sessions. Curtis would later testify that he had not intended his name to be in any mailings. Peterson’s investigation, the impetus for Moun Day’s federal indictment for mail fraud, found that Moun Day



This image, reproduced in several newspapers across the country in 1911, presents Dolley as an exemplary crusader whose work in Kansas should be carried forward everywhere.

and his wife had cleared as much as \$500,000 from their securities sales.²⁶

By June 1913, “a number of letters had been received by the [Kansas Bank Commissioner’s] department and these letters led to an investigation” that effectively shut down Moun Day’s operation. The investigation was not yet completed when Moun Day sued to block it. That lawsuit prompted Peterson, a former district attorney for Allen County, Kansas, to step up the pace of the investigation and do what most of Moun Day’s buyers did not: he went to New Mexico to look at the tract and research land and water rights records in Santa Fe. Checking water rights applications filed with the New Mexico state engineer, he found that

26. “MounDays Think New Trial Is Sure,” *Las Vegas Optic*, January 23, 1914; “Court in a Hurry,” *Topeka State Journal*, January 17, 1914; “Don A. MounDay, Promoter of New Mexico Lands, Arrested by Government in Topeka.”

25. “The Case Grows”; “Prison 2 Years,” *Topeka State Journal*, April 14, 1914.

someone else had rights to use virtually all the Gallinas and Rio Concho water upstream of the Ortiz tract lands. This meant there was not enough water flowing through the tract to support Moun Day's promised irrigation scheme. It was also on his trip to New Mexico that Peterson learned that Moun Day's option on Ortiz tract land, granted to him by Senator Thomas Catron in 1908, had expired. Moun Day was selling contracts—in fact, pushing hard to sell even more—for land he had never actually owned and on which he no longer had even an option to buy.²⁷

Kansas Attorney General John S. Dawson said he expected Moun Day's lawsuit to be quickly dismissed, and a glance at Moun Day's lawsuit suggests why. The promoter argued that the Blue Sky Law was unconstitutional because it authorized the taking of private property for public use without due process. The Blue Sky Law, however, did not contemplate any such taking, Dawson pointed out. The suit also said that the Blue Sky law offended the Constitution by conferring judicial powers on an administrative official—the police power that the U.S. Supreme Court had already validated for Dolley, as bank commissioner, over a challenge to his administration of the state's bank guaranty fund. Moun Day also charged that the Blue Sky Law violated constitutional “guarantees to all citizens of certain inalienable rights to life, liberty and pursuit of happiness”—promises contained in the Declaration of Independence, not the Constitution—and that it imposed cruel and unusual punishments. Courts had not offered many definitions of what such punishment entailed, although a 1910 Supreme Court decision in *Weems v. United States* offered a hint. In that case, the court held that a prison sentence of fifteen years, in chains and at hard labor, was cruel and unusual punishment for a Philippine Islands territorial Coast Guard officer who embezzled 616 pesos

(about \$455). Dawson was easily able to suggest that barring Moun Day from selling securities was quite different from fifteen years of hard labor for larceny. Moun Day also alleged a violation of the Kansas Constitution because the title of the legislature's bill covered more than one subject.²⁸

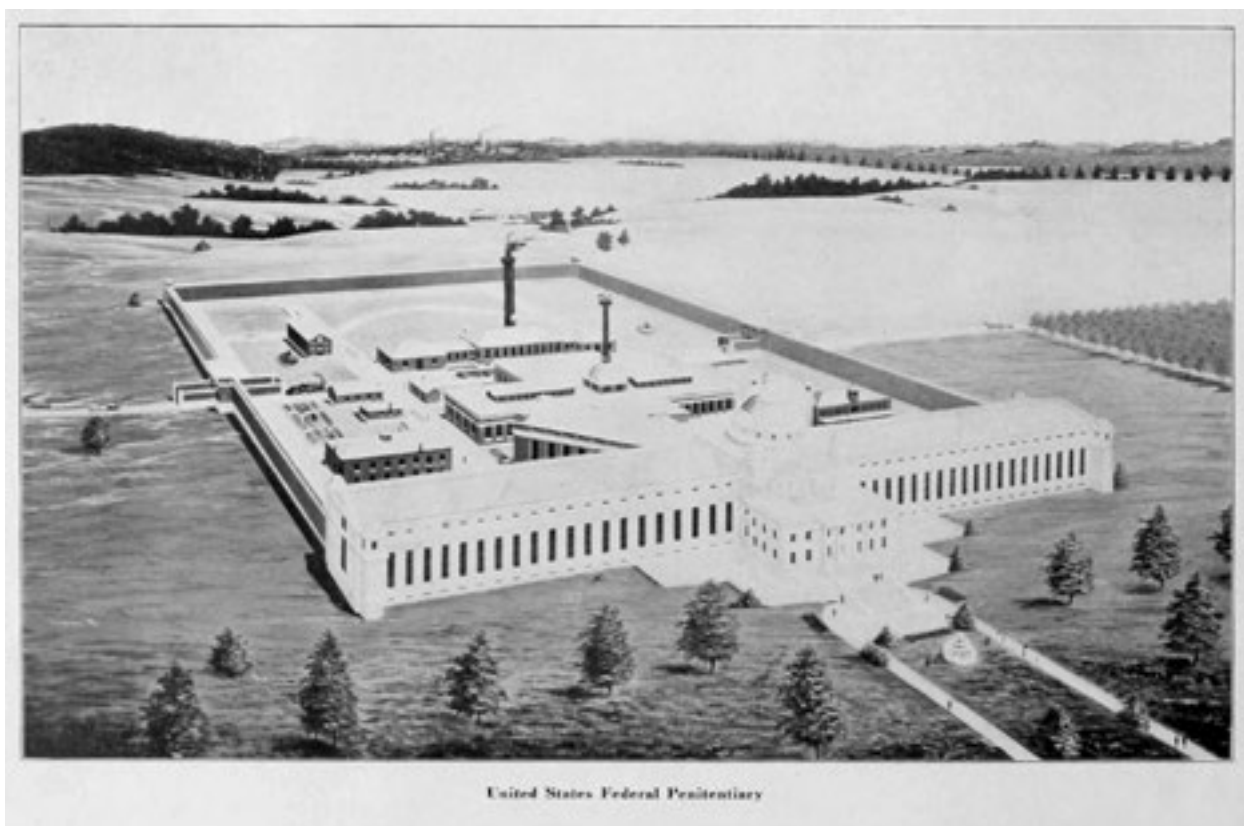
When Moun Day sued to halt Peterson's investigation, Dolley, although no longer bank commissioner, rushed to the defense of his law. Dolley suspected that securities firms, already organized through the new Investment Bankers Association with a mission to overturn Blue Sky laws, were “calling for money to make up a large jack-pot for the sole purpose of having the blue sky law declared unconstitutional.” His Blue Sky Law, Dolley continued, “interferes with the business of a certain class of unscrupulous companies. . . . It is life or death with them.” To uphold the Blue Sky Law in court, as Kansas state courts would do but federal courts elsewhere for several years would not, would “once and forever put the blue sky merchant and fake stock sellers out of business,” Dolley said.²⁹

Dolley was familiar with land and irrigation deals, after all. Barely six months after the Blue Sky Law went into effect on March 15, 1911, he told the *Saturday Evening Post* that it was essential because after years of hard times, Kansans finally had money—“fat picking,” Dolley said. Even before Moun Day's case, an early political challenge to Dolley's administration of the Blue Sky Law came when the Reverend Festus Foster's brothers could not get their request to sell stock in the Louis Lake Conservation Company, a Wyoming irrigation scheme, past Dolley as quickly as they wanted. Foster complained to Governor Walter Stubbs that Dolley was acting on a personal grievance: “My brother had been Mr. Dolley's pastor at Maple Hill and had had some controversy with him as trustee

27. “No State Worry”; “Moun Day Case,” *Topeka State Journal*, July 28, 1913; “The Case Grows”; “Don A. MounDay, Promoter of New Mexico Lands, Arrested by Government in Topeka.”

28. *Assaria State Bank of Assaria, Citizens Bank of Axtell, et al. v. Joseph N. Dolley*, 219 U.S. 121 (1911); *Weems v. United States*, 217 U.S. 349, 358, 370, 382 (1910); “No State Worry”; “Dolley Is Sued,” *Topeka State Journal*, July 2, 1913.

29. “Have a Jack Pot,” *Topeka State Journal*, July 1, 1913.



The Federal Penitentiary in Leavenworth as pictured in a 1909 book produced by the Greater Leavenworth Club. Courtesy of the Library of Congress.

of the church and also as a member of the school board when my brother's wife was teacher and Mr. Dolley's daughter was a student before the board for discipline."³⁰ When Foster went on to complain directly to Dolley, "he disclaimed any prejudice, but said 'the people of Kansas have been pouring money into irrigation for fifty years and have never got a dollar in return. If your company returns a dollar to Kansas investors in irrigation it will be the first company to do so.'"³¹

Stubbs's file on the matter includes a memo from Dolley's main securities investigator, F. J. Patridge, which noted that the company's organizers said they had put a large sum of

their own into the company, in the form of \$1.51 million face value of shares, but that many of these proceeds were simply IOUs. The cash actually paid in amounted to only \$30,000.³² After looking over the file, Commissioner John T. White of the state Public Utilities Commission found that there was no tangible value to the company's assets: water rights and promissory notes. White added that buyers of the company's shares would get nothing for their money but the empty promises of promotional mailings hinting that land then worth perhaps \$10 or \$20 an acre would rise to as much as \$1,000 an acre when irrigated and cultivated.³³ After his neighbor's story about investing in Moun

30. Payne, "How Kansas Drove Out," 3; Festus Foster to Gov. Walter Stubbs, July 6, 1912, "Correspondence—State Departments," box 17, folder 6, item 32, Records of the Office of Governor Walter Stubbs, Kansas State Archives, Topeka (hereafter "Stubbs Records").

31. Festus Foster to Dave Leahy, April 6, 1912, "Correspondence—State Departments," box 17, folder 6, item 31, Stubbs Records.

32. F. J. Patridge memorandum, undated, "Correspondence—State Departments," box 17, folder 6, item 33, Stubbs Records.

33. John H. White to Walter Stubbs, August 12, 1912, "15 Reasons Why," "Correspondence—State Departments," box 17, folder 6, item 35, Stubbs Records.

Day's venture, Dolley knew something about irrigation schemes.

Before long, so would the public. Moun Day also sued Dolley for defamation, seeking \$50,000 in damages. It took less than a week for the Kansas Supreme Court to dismiss Moun Day's first suit, against the state. The court went further and appointed a receiver for Moun Day's companies. Moun Day eventually dropped his defamation suit against Dolley after a federal court convicted him and his wife of mail fraud, basing its case largely on Peterson's findings.³⁴

In public statements and through his lawyer, A. B. Quinton, one of the incorporators of his company, Moun Day argued that the Blue Sky Law granted excessively sweeping powers to the Kansas bank commissioner. In court, Quinton claimed that he could show that one promoter had paid \$900 to get a permit for his Wyoming irrigation company to sell securities in Kansas, a sum far above the \$2.50 fee the act imposed. Asked if the Wyoming promoter's \$900 payment was illegal or irregular, Quinton said it was not, "but it isn't just to take all of a man's money to permit him to do business." The \$900, that is, if it was in fact ever demanded, would have been a suggestion that the promoter needed to at least put that small amount of his own money into a venture that likely ran into the millions of dollars to complete. Dolley, with his Maple Hill notions of how to do business, thought it mattered that organizers of an enterprise have at least some of their own money at risk, and that too many speculative offerings simply did not have the resources to operate a mine or oil well or irrigation system.³⁵

A month after Moun Day sued the state and then Dolley, post office inspectors, now aware of his shenanigans, raided Moun Day's Topeka office. As one post office inspector carried out seized documents, one of Moun Day's attorneys—former U.S. attorney Harry Bone, who had

unsuccessfully prosecuted Henry Harrison Tucker for his dubious Uncle Sam Oil Co. promotion—whacked the inspector several times with a cane. Moun Day, a large 240-pound man, threatened an inspector with an even heavier stick. Post office officials found correspondence and mailings that included a twenty-eight-page pamphlet asserting that the semiarid Ortiz tract, which saw less than half the average U.S. rainfall, would soon become a Garden of Eden thanks to the land's fertility and associated water and irrigation rights—rights that Peterson's investigation showed Moun Day did not have, just as he did not actually own the land he was selling. The inspectors discovered that Moun Day's mailings had netted him money from nearly six hundred people in twenty states and territories. Those individuals had purchased contracts for five-acre tracts at \$200 apiece, with some investing as much as \$6,000.³⁶ This \$40 an acre that buyers paid Moun Day was for land worth about \$4 an acre, the price Moun Day himself had said he would pay when he acquired an option on the 164,000-acre Ortiz tract. Moun Day paid \$165 for the option to buy the tract at the \$4 an acre price option.³⁷

While a judge ruled that none of the records from the post office raid could be presented to a grand jury, Peterson's investigation and the post office follow-ups nonetheless convinced a federal grand jury to indict Moun Day and his wife on twelve charges of mail fraud.³⁸ Post office inspectors found distressing cases of "widows who mortgaged their homes to buy this land," evidently as a gamble that the value would rise rather than venturing to farm it themselves. In St. Mary's, Kansas, "a widow sold her home to invest in land which Moun Day and his representatives assured her would make her rich," the inspectors reported. An elderly man "sold his little store, gathered all his worldly possessions, and bought the land which Moun Day was never able to convey." Moun Day was creative in attempting to convince people that the land was extremely

34. "Dolley Is Sued"; "MounDay Loses," *Topeka State Journal*, August 11, 1913; "Moun Day Drops Suit," *Topeka State Journal*, July 25, 1914.

35. "The Blue Sky Law."

36. "Both Are Guilty," *Topeka State Journal*, January 20, 1914.

37. "Don A. MounDay and Wife Arrested Today."

38. "Must Face Trial."

productive. “Upon one occasion D.A. MounDay, at his office in Topeka, exhibited to me a basket of fruit which he stated was grown on some of these irrigated tracts,” said Wabaunsee County Clerk L. B. Burt. Burt bought contracts for two plots as well as two town lots in a never-built town, never noticing the contradiction between Moun Day’s claims about productivity thanks to irrigation and the fact that Burt’s money was intended to build that very irrigation system. Kansans, “in the state where people knew nothing of the sugar trust except as they read of the investigations in the newspapers,” seemed particularly susceptible because “Moun Day posed as a trust magnate,” and “here was a chance to get in on the ground floor with the big American sugar trust.”³⁹

The federal trial basically turned on Moun Day’s advertising mailings, and the conclusion that the Moun Days had defrauded people through the mail came quickly. Shown a Moun Day mailing picturing a sugar refinery with a caption stating that it was in operation on the Ortiz tract, Senator Catron stated, “There is no sugar factory in New Mexico. The only one in the state burned down several years ago.” Senator Charles Curtis said he did not know that Moun Day had claimed him as a director. Inspection of the land, even a glance at a better map than the one Moun Day mailed to sales prospects, would have shown that water for irrigation had to flow upstream for eight hundred feet to reach one reservoir and from there another eight hundred feet to the next, civil engineer V. K. Jones testified. E. S. Rice, chief engineer for the Atchison, Topeka and Santa Fe Railway, said the branch line promised on the map required a mile-long tunnel and a bridge over an eight-hundred-foot canyon and “would lead nowhere and have no chance to make money.”⁴⁰ Moun Day tried to fend off the charges by filing more lawsuits of his own—against Catron, the two post office inspectors who had raided his office, and U.S. Attorney Fred



In this not particularly complimentary cartoon from the Topeka State Journal, dated May 27, 1910, Dolley is pictured as a schoolboy helpfully guiding bankers out of stepping in something unpleasant.

Robertson—but to no avail. He was sentenced to two years in prison and a \$1,000 fine. His appeals were summarily dismissed.⁴¹

The fraud was relatively easy to prove. Lies are what make a fraud. To be unfair to a buyer, the question the Kansas regulators asked was about a subtly yet significantly different legal issue: it is possible to take advantage of an individual’s lack of knowledge, or to exploit wishful thinking, without a direct lie. Yet under the caveat emptor (buyer beware) legal rule, which governed disputes over sales, a disappointed buyer has little recourse unless the seller committed a fraud. While Dolley’s arguments for his Blue Sky Law focused on fraud, the reach of that law went far beyond fraud. For a banker from Maple Hill, where neighbor-to-neighbor commerce depended on trust that would have been abused by accepting the buyer beware standard, fraud and unfair dealing were equally reprehensible.

Moreover, Dolley felt that many securities simply should not be offered to people such as his Maple Hill neighbors. “Local companies with local men behind them engaged in local business about

39. “The Case Grows”; “Don A. MounDay, Promoter of New Mexico Lands, Arrested by Government in Topeka.”

40. “Court in a Hurry.”

41. “MounDay Brings Suit against Catron,” *Albuquerque (NM) Evening Herald*, October 20, 1913; “He Asks Damages,” *Topeka State Journal*, September 26, 1913; “Both Are Guilty”; “Moun Days Must Serve Sentence,” *Topeka State Journal*, July 10, 1915.

which every man has a chance to know something are a different matter” than a promotion from a traveling stock boomer or securities marketed through mailings, he mused in print as he began thinking about what a Blue Sky Law might look like. People ought to remember the lessons of the Santa Fe railway and its several receiverships, he said. “How many men of the promoters and first stockholders of that company who entered via the ground floor made money out of it?” he asked—and answered, “Not one.” Dolley felt he had to warn “against the promiscuous habits of Kansas people at this time to buy stock from every agent who comes along.”⁴² That was why Peterson’s initial focus was on the fairness of the deal to investors.

To (very paternalistically) protect his fellow Kansans, Dolley’s Blue Sky Law said that companies and their sales agents hoping to offer stocks or bonds in Kansas must win permission from him.⁴³ That permission came on a finding that, in the bank commissioner’s opinion, there was a good chance buyers would make money; that the company had a “fair, just and equitable plan for the transaction of business”; and that the securities promised a fair return to investors.⁴⁴ No other government had tried anything like this. Unlike the relatively rare post office prosecutions for mail fraud, Dolley’s law was prospective, not an after-the-fact legal action. Like any small-town banker, who knows who is (or is not) worth investing in and who can (or cannot) afford to take a risk, Blue Sky Act officials had to intervene before individuals got in over their heads financially. “All I want is that the Kansas farmer or workman who invests his money in any stock company gets a fair and square run for that money,” Dolley said, adding, “These men who sell stock are smooth as silk. They know every trick of their trade and they can make their schemes look as good as a government bond. They trick many shrewd and hard-headed farmers

who know nothing of the wiles of the commercial world.”⁴⁵

Dolley read the language of the Kansas Blue Sky Law broadly, and this approach was what Peterson adopted in the Moun Day investigation. Although the Blue Sky Law did not say anything about sales commissions, for instance, Dolley and Blue Sky investigations looked carefully for these. They often amounted to 30, 40, and even 50 percent of the sums Kansans paid for shares; that level suggested that an offering was less about raising money for a new mine, oil well, or factory than about what the sales agent received. Dolley told interviewers that commissions should not exceed 15 percent (brokers’ commissions today typically range between 1 and 2 percent).⁴⁶ Investigations could be quite extensive. “Here is the case of a corporation with a high-sounding title, duly incorporated under the laws of a sovereign state,” Dolley told one reporter as he described how his suspicions had been raised by letterhead showing that the company operated out of offices in Chicago, one thousand miles away from where it was incorporated. The offering included a “beautifully typewritten letter from the president” explaining that the company was developing a 125,000-acre tract of Central American land especially suited for raising bananas. The company was to receive title to this land after paying \$2.50 an acre, even though similar land was selling for \$20 an acre. The letterhead included “a quite imposing list of directors,” and the stock certificate looked just like a government bond. “All this looked very plausible. One trouble with it is, it looks too plausible,” Dolley said. “Why should gentlemen who can buy land for two dollars and a half an acre and very soon sell it for twenty dollars be coming out to Kansas in order to raise the necessary capital?”⁴⁷

This was the same question Peterson asked as he looked into Moun Day’s scheme. That same

42. “The Plan Works,” *Topeka State Journal*, June 9, 1910.

43. Act of March 10, 1911, Kansas Session Laws ch. 133, § 3, 210 (1911).

44. *Ibid.*, § 5, 212–13.

45. “After the Fakirs,” *Topeka State Journal*, April 8, 1910.

46. Isaac Marcossou, “Barring Out the Stock Thieves,” *Munsey’s Magazine*, February 1912, 680.

47. Payne, “How Kansas Drove Out,” 71.

question prompted Peterson to visit New Mexico, check water and land records, and look at the land. In this case, Dolley questioned the Central American government that had supposedly signed the land sales contract and discovered that it had repudiated the deal. Dolley blocked the offering.⁴⁸ Blue Sky reviews were not casual or quick. The Central American investigation started with the smallest of matters: suspicion about what had become a standard practice of incorporating a business in a state with easygoing laws while operating in another.

Questioning what investors might possibly gain was the grounds for Dolley's decision to block an offering of stock from Sunny Kansas Sanitarium for Tuberculosis, an enterprise promoted by two brothers named Isenberger. Dolley's argument was "that it did not seem to be a promising investment for the stockholders." The sanitarium was a new venture, having just erected its building five months before Dolley's order, with a business plan that promised stockholders a 12 percent return on their investment. This was based on a call on its assets or revenue—the plan did not specify—but with no accounting for operating expenses. Dolley's examination uncovered that the only sources of funds for those 12 percent dividends were sales of the stock itself. The sanitarium was, in effect, a Ponzi scheme. The promoters complained to Governor Stubbs, who asked an old friend named W. B. Ham, who the Isenbergers had said was a stockholder, for his view. Ham replied three days later that he "had never heard of the Sunny Kansas Sanitarium Company." He added that on a recent trip, "I saw from the car window at Natoma a rather pretentious building, some three fourths of a mile South of that town, and . . . was told it was the Isenberg [sic] sanitarium." Ham said he knew nothing about the property's value, the number of patients, patient fees, or whether it was encumbered by a mortgage or other debts. The sanitarium never

actually opened; it had no water supply and was unable to contest the lawsuits filed against it.⁴⁹

Another case developed when an Oklahoma promoter sought permission to sell shares in a company that claimed to have invented a new battery that would revolutionize the booming electric power and machinery business. Dolley looked beyond the endorsements of prominent bankers and businessmen and past a comment from a large railroad that was testing the battery and claimed that, while the test had not yet been completed, "it looked like a marvelous thing to them." Unconvinced, Dolley asked the electrical engineering department at Kansas State University for an evaluation. After less than a month, the engineers advised him that the battery was an "absolute fake," and Dolley barred the Oklahoman from selling stock in Kansas.⁵⁰

Another rejected offering was for a railroad; Dolley gave no details except that it forecast huge volumes of traffic from a lightly settled territory. "I cannot tell how many ciphers there are in the capitalization; but . . . the corporation doesn't pretend it has any railroad now," Dolley said.⁵¹ There were, in Dolley's view, businesses that simply should not be financing themselves by selling shares because they were not operational, they were predicated on unproven technology, backers had not put up enough of their own resources, or sales agents' commissions were suspiciously high. As an old banker, he knew what to look for, even if his neighbors did not.

This was not the view of businesses seeking to raise money through a stock offering or of the securities firms that sought their business. Nor was it the view of the federal judges who overturned

49. Dave Leahy to W. B. Ham, May 4, 1912, "Correspondence—State Departments," box 17, folder 6, item 31, Stubbs Records; W. B. Ham to Walter Stubbs, May 7, 1912, "Correspondence—State Departments," box 17, folder 6, Stubbs Records; "Osborne County Hall of Fame Honors," October 29, 2021, ochfhonors.wordpress.com/2021/10/29/honors-in-architecture-notable-structures-of-farm-and-home-in-osborne-county-kansas-part-one/.

50. "The Kansas 'Blue Sky Law,'" *Central Law Journal* 75 (September 20, 1912): 222.

51. Payne, "How Kansas Drove Out," 5.

48. *Ibid.*

Blue Sky laws in states that had hastened to follow Kansas. The lead case, challenging Michigan's law, came from the Alabama and New Orleans Transportation Co. railroad. It had been selling preferred stock and first and second mortgage bonds in Michigan. The company was solvent and had ample assets to support its securities, and the railroad argued that having to comply with the Michigan law violated its constitutional rights—although its offering had not in fact been rejected (and on the face of it was unlikely to be rejected). It was the requirement to file and await approval that the railroad found objectionable. The three-judge panel that heard the case said it was taking notice that the law was “intended . . . ‘to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations’” but added that if the law had in fact done so, the case would not have been filed. “It does not cover fraudulent securities merely,” the judges wrote, “but reaches and prohibits the sale of securities that are honest, valid, and safe; it does not simply protect the unwary citizen against fraudulent misleading, but it prevents the experienced investor from deliberately assisting an enterprise which he thinks gives sufficient promise of gain to offset the risk of loss.”⁵² With this 1914 ruling, the court struck down Michigan's law. Similar decisions that same year in Ohio, West Virginia, and Iowa overturned those states' Kansas-model laws.

The Kansas Supreme Court tossed Moun Day's challenge in 1913. A year later, in another case growing out of Peterson's investigation of Moun Day, Atchison District Court Judge W. A. Jackson rejected a challenge by one of Moun Day's sales agents, A. C. Lewis of Muscotah, Kansas. Lewis argued that the Blue Sky Law was unconstitutional because it denied due process rights when the bank

52. *Alabama & N.O. Transp. Co. v. Doyle et al.*, 210 F. 173, 175, 177–78 (U.S. District Court, E.D. Mich. 1914). The other cases were *Bracey et al. v. Darst, State Auditor of West Virginia et al.*, 218 F. 482 (U.S. District Court, N.D. West Vir. 1914) and *William R. Compton Co. v. Allen*, 216 F. 537, 538, 545, 546 (U.S. District Court, Iowa 1914) (per curiam), cert. dismissed, 239 U.S. 652 (1915).

commissioner rejected applications for permits to sell shares. Lewis also argued that the Blue Sky Law gave too much power to the commissioner and recycled Moun Day's complaints that the law's penalties were excessive and that 1913 amendments offended the Kansas Constitution. Judge Jackson, like the Kansas Supreme Court the year before, brushed aside these arguments. Offering more detail than the Supreme Court had provided, he ruled that the state had the right to regulate and control business and that changing business conditions meant the bank commissioner and similar offices were indispensable components of modern government. Jackson rejected the argument that the bank commissioner had denied Lewis due process while depriving him of property, saying that the Blue Sky Law could not depreciate the actual value of an excessively speculative offering, as opposed to the fictional or aspirational amount that a stock promoter quoted to sales prospects. “It is no hardship,” Jackson ruled, “to say to him . . . he must satisfy some representative of the people that his dealings are on the square.”⁵³ Like the Kansas Supreme Court, Jackson said it was not an overreach of the state's power to insist that a company demonstrate that it was offering investors a fair deal.

The Kansas legislature, meanwhile, had shored up Dolley's law with a series of amendments in 1915 that detailed seven specific grounds for rejecting an offering, including deceptive advertising, share prices in excess of the value of the offerer's assets, and the conclusion that a business was “a mere scheme of a promoter or promoters to get rich quick at the expense of the purchasers.”⁵⁴ Kansas courts routinely brushed aside challenges claiming that

53. “Blue Sky Law ‘O.K.’,” *Hays Free Press*, March 14, 1914.

54. Unfairness, Imposition or Fraud in the Sale of Securities—So-called “Blue Sky” Law, 1915, Kansas Session Laws, ch. 164, 195, 197–98 (1915). The seven grounds were that the offerer was insolvent or untrustworthy; the business plan was unfair, inequitable, or fraudulent; the business plan did not prevent misuse of offering proceeds; advertising material was deceptive; the stock was watered; the business itself was illegal; and the business was a scheme to enrich promoters at the expense of investors.



The intersection of Main and Third Streets in Maple Hill, looking south in 1911. The brick building in the right foreground was Dolley's place of business.

the Blue Sky Law gave too much power to a single official, and they continued to reject notions that the long-standing common law principle about buying and selling items—*caveat emptor*, or buyer beware—applied to dealing in stocks and bonds.⁵⁵ The Kansas Supreme Court in 1920 upheld the conviction of stock promoter R. J. Bell for making false statements about an oil company's finances. In 1923, the court invalidated a note when the maker did not obtain a Blue Sky Law permit. In 1930, the court held that the buyer of securities in a firm that had proved worthless could get his money back from the company's officers because the firm did not have a state permit to sell shares in Kansas.⁵⁶

Kansan jurists were not out of step with their colleagues elsewhere in the country. "Certainly it is within the power as it is clearly the duty of the State to limit and regulate the powers and operations of Corporations," the Florida Supreme Court ruled in

an early challenge to that state's Blue Sky Law. In this case, a securities dealer contended that he had been denied equal protection of the laws, but the Florida court held the argument did not have merit because the Blue Sky Law involved "the public welfare and is applicable alike to all corporations."⁵⁷ In Montana, where State Auditor William Keating barred National Mercantile Co. Ltd. from operating on the grounds that it violated his state's Blue Sky Law, U.S. District Court Judge George Bourquin upheld the ban. "Under any circumstances, few could realize their hopes," Judge Bourquin drily commented after studying the company's offer to sell mortgage loan securities for 100 monthly payments of \$50. "That this corporation is designed to profit its owners at the expense of victims enticed by pseudo promises and deceptive prospects seems clear," Bourquin ruled. There was no constitutional issue of property rights or equal protection under law, he added, for "all this is settled law since the classic case wherein one highwayman of two

55. *Kansas v. Short*, 247 Kans. 114 (1926); *Harbor Business Blocks Co. v. Gregory*, 169 Kans. 191 (1917).

56. *Kansas v. Bell*, 193 Kans. 373 (1920); *Weisendanger v. Lind*, 220 Kans. 263 (1923); *Daniels v. Craiglow*, 292 Kans. 771 (1930).

57. *Ex Parte C.H. Taylor*, 68 Fla. 61, 73 (1914).

operating upon Blackheath near London came into chancery for an accounting of profits accruing from their villainy.”⁵⁸

The U.S. Supreme Court eventually weighed in, upholding Kansas-model Blue Sky laws in Michigan and Ohio. “It is not wise to put out of view the tendencies of the business and that it tempts to and facilitates speculative judgments . . . improvident judgments, if the purpose be investment,” Justice Joseph McKenna wrote in the Ohio case.⁵⁹ The Michigan law, he noted in a decision released the same day, “burdens honest business, it is true, but burdens it only that under its forms dishonest business may not be done. . . . It costs something to be governed.”⁶⁰

The Kansas model stood. It provided important protections for investors in those states, such as Michigan and Ohio, that adopted it. Not long after World War II, for instance, Michigan Corporations and Securities Commissioner Howard W. Warner looked back to when he had shielded would-be investors in the Kaiser-Frazer Corporation’s unlikely dream of launching a new automobile manufacturer in competition with the Big Three. Warner banned the sale of Kaiser-Frazer stock in Michigan, saying the price was too high given what the company said it could earn. The U.S. Securities and Exchange Commission allowed the offering elsewhere.⁶¹ Kaiser-Frazer shares soon fell and never returned to the offering price; the company went under a few years later.

Warner’s standard for fairness—a price-earnings ratio of twenty to one—and his concern that a start-up company aimed to use others’ funds when its principals opted not to invest their own money reflected his view that some businesses are simply unsuitable vehicles for most people’s

savings. This notion of unsuitability was, in fact, the view that led Dolley to push for the Blue Sky Act; it is the view that led Virginia’s Bureau of Securities, exercising its Kansan-model merit review powers, to bar the DeLorean Motor Company’s initial share offering after it had been blessed by federal regulators, blinded, as were their predecessors with Kaiser-Frazer, to the challenges of cracking an automobile market controlled by some of the largest and best-capitalized companies in the nation. DeLorean would collapse just a few years later.⁶² But the belief that some securities are simply not appropriate for public sale is not common in financial and regulatory circles today. Those states that still retain merit review authority rarely exercise it.

Nevertheless, while Dolley’s approach was challenged as paternalistic and heavy-handed, investors happily turn over the selection of stocks and bonds to managers of mutual funds or other professional managers. Confidence in their own merit review abilities, even with the disclosures required by federal securities law, remains limited.

Except for his failed lawsuit challenging the Blue Sky Law, Moun Day never said another public word about the law, nor, for that matter, would he ever discuss his view about what kind of enterprise should be able to sell shares to the public. Dolley would (and often did). “Apparently some of the people engaged in it think they have an inalienable constitutional right to sell worthless ‘securities,’” he told one magazine writer. When two promoters protested his refusal to allow them to continue a seven-year run of selling stock in their company, Dolley fired back, “I’ll give you two dollars a head for all the people you will bring to my desk who ever bought stock of any kind from you and got back as much as five per cent of their money!” At that point, Dolley concluded, the two promoters hastened away.⁶³ Neither the Blue Sky Law nor Dolley’s often exaggerated championing

58. *National Mercantile Co. Ltd. v. Keating, State Auditor of Montana*, 218 F. 477, 479 (U.S. District Court, Mont., 1914).

59. *Harry Hall v. Geiger-Jones Co.*, 242 U.S. 539, 554–55 (1917).

60. *Frank Merrick v. N. W. Halsey & Co.*, 242 U.S. 568, 587 (1917).

61. Despite the Michigan ban, Kaiser Frazer confidently assured people in its hometown of Ypsilanti that it “is experiencing no difficulty in disposing of its new issue.” “Stock Barred in Michigan Sells,” *Ypsilanti (MI) Daily Press*, January 29, 1946.

62. David Ress, “On the SCC’s Front Line for Consumer Protection,” *Richmond (VA) Times-Dispatch*, October 1, 2022.

63. Payne, “How Kansas Drove Out,” 4.

of it had the one effect he wanted: Dolley never did return to elected office after his term as banking commissioner ended in 1912, and with it the kind of public platform his quiet (but failed) bid for the Republican gubernatorial nomination would have required.

Through his law, Dolley wanted to assure Kansans that they could safely invest; the Blue Sky Law merely substituted the judgment of state officials for that of the would-be investor. This is not what current securities law empowers regulators to do. Today, when the Securities and Exchange Commission clears the way for a public stock option, it is reassuring potential investors that the publicly available information appears to be complete (though it is sometimes wrong about this, as Enron, WorldCom, and Bernard

Madoff suggest). The commission does not speak about fairness to investors, risks involved, or even the accuracy of the information provided. The trajectory of regulation, from Dolley's Blue Sky Law to a federal securities law, tracks a fundamental shift in public views of what investment entails: from participation in a business to participation in a market; from financing the capital needed to conduct a business to simply gambling. This shift of mentality—from Maple Hill to Wall Street, in a way—as revealed in the evolution of securities regulation might say something important, too, about a nation where buyer beware prevails. It is a sense that individuals must look out for themselves because society no longer will.^[KH]