

DEPARTMENT OF CORPORATIONS

BRIAN R. VAN CAMP
Commissioner

IN REPLY REFER TO:

FILE NO. _____

COMMISSIONER'S OPINION NO. 72/16CTHIS LETTER IS NOT AN INTERPRETIVE OPINION
FOR THE REASONS STATED BELOW.

Mr. Richard R. Terzian
Attorney at Law
Burke, Williams & Sorensen
Suite 1000
649 South Olive Street
Los Angeles, CA 90014

Dear Mr. Terzian:

The request for an interpretive opinion contained in your letter dated January 5, 1972, has been considered by the Commissioner. Your letter raises the question whether, under the circumstances described by you, the proposed changes with respect to \$1 par value common shares and debentures of Blue Chip Stamps, a California corporation ("Blue Chip"), are subject to the qualification requirements of the Corporate Securities Law of 1968. This question is answered in the affirmative.

You have represented that Blue Chip has assets of approximately 148.4 million dollars and for the last fiscal year, ending February 27, 1971, had a net after-tax income of approximately 8.6 million dollars. Its shareholders' equity is approximately 43.3 million dollars, and it has regularly since May 1970 paid a quarterly dividend of \$.06 per share on its common shares.

The common shares and the debentures are registered pursuant to Section 12(g) of the Securities Exchange Act of 1934. The debentures were qualified with the SEC pursuant to the Trust Indenture Act of 1939, and offered to the public in December 1968. At the present time, \$10,840,000 principal amount of debentures are outstanding.

You have further represented that the indenture under which the debentures were issued, prohibits declaration or payment of any dividend if, upon giving it effect, the "claims or causes of action", as defined therein, asserted against Blue Chip would exceed one-half the stockholders equity or 25% of the net income of Blue Chip for the preceding fiscal year. The indenture permits redemption of debentures commencing in December 1974, and requires

contributions to a sinking fund, commencing at the same date, in the amount of 20% of the principal amount then outstanding. However, neither contributions to the sinking fund nor redemption, purchase or other acquisition of debentures is permissible if immediately thereafter the "claims or causes of action" would exceed one-half the stockholders equity.

Blue Chip proposes to seek the requisite consent of debenture holders required and sufficient under the indenture to modify its terms, so as to permit continuation of payment, subject to California Corporations Code limitations, of regular quarterly dividends of not more than \$.06 per share to common shareholders irrespective of the "claims or causes of action" or the earnings during the prior fiscal year, and moreover, to permit contributions to the sinking fund and redemption, purchase or other acquisition of debentures after December 1, 1974, irrespective of the "claims or causes of action". Furthermore, Blue Chip proposes to increase the interest rate on the debentures from 6-1/2% to 6-3/4%.

At present, lawsuits are pending against Blue Chip seeking damages in amounts less than one-half the stockholders equity for alleged violations of Federal anti-trust laws by Blue Chip's predecessor. You have represented that the complaints on file in these lawsuits might be amended to assert damages in amounts greater than one-half the stockholders equity. In addition, Blue Chip may dispose of certain securities in its investment portfolio at a loss which may reduce its earnings for the fiscal year ending February 28, 1972 to a point where payment of the regular \$.06 dividend in March 1972, might exceed 25% of net income for the preceding fiscal year and therefore would not be permissible under aforementioned provisions of the indenture.

Section 25120 of the Corporate Securities Law of 1968 imposes a qualification requirement on the offer or sale by an issuer in this state of any security issued by it in connection with any change in the rights, preferences, privileges or restrictions of or on outstanding securities, unless an exemption is available. Section 25103(g) provides such an exemption for any change in the rights of outstanding debt securities except, among others, a change in the rights to interest thereon, if such change substantially and adversely affects any class of securities.

Although you have represented that the proposed additional 1/4% interest payment to be paid to debenture holders would amount to only \$27,100 per year and that the present damage claims are in amounts less than one-half of the shareholders equity, it is our

opinion that this proposed increase of interest payments would substantially and adversely affect the common shareholders by materially reducing their equity.

Since this change under Section 25103(g) activates the qualification requirement of Section 25120, we need not consider whether permitting sinking fund contributions and redemption of debentures in disregard of present restrictions is a change of sinking fund and redemption provisions within the meaning of Section 25103(g) substantially and adversely affecting the common shareholders or whether permitting payment of dividends on the common shares in disregard of present restrictions, is such a change substantially and adversely affecting the holders of the debentures by reducing funds available for the payments required under the indenture.

Accordingly, it is our opinion that under the circumstances described by you as outlined above, the proposed modification of the indenture is not exempt from the qualification requirement of Section 25120 of the Law, by virtue of Section 25103(g).

Inasmuch as interpretive opinions are issued for the principal purpose of providing a procedure by which members of the public can protect themselves against liability for acts done or omitted in good faith in reliance upon the administrative determination under the Corporate Securities Law made in the opinion, and since there can be no such reliance where the Commissioner asserts jurisdiction with respect to a particular situation or determines that a legal requirement is applicable, advice to that effect, as contained in this letter, does not constitute an interpretive opinion.

Dated: San Francisco, California
February 16, 1972

By order of
BRIAN R. VAN CAMP
Commissioner of Corporations

HANS A. MATTES
Assistant Commissioner
Office of Policy