

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION 80-3A  
514(a)

JAN 18 1980

Mr. Michael C. Greenfield  
Asher, Goodstein, Pavalon, Gittler,  
Greenfield and Segall, Ltd.  
228 North LaSalle Street  
Chicago, Illinois 60601

Dear Mr. Greenfield:

This is in response to your letter of January 30, 1979, requesting an advisory opinion regarding the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the payment of pension benefits to a non-employee former spouse is an assignment or alienation of benefits prohibited by ERISA section 206(d)(1) or whether Illinois marital property laws relate to employee benefit plans within the meaning of ERISA section 514(a) and are therefore preempted.

You advise that your client, the Suburban Teamsters of Northern Illinois Pension Fund (the Fund), has been notified that one of the Fund's participants is a respondent in a dissolution of marriage action. You described in your submission a decree of the Circuit Court of the 12th Judicial Circuit, Will County, Illinois, which ordered that the petitioner be awarded a 20 percent interest in the respondent's pension benefits when, as, and if the same become payable to the respondent.

The Department of Labor has taken the position that there is an implied exception in the anti-assignment provisions of ERISA for state court decrees entered in marital proceedings ordering payment of a portion of a participant's benefit based on family support or community property claims to a non-employee spouse or former spouse of a participant whose pension is in pay status. The Department also argued that, except for such decrees, ERISA preempts state community property laws insofar as they relate to employee benefit plans covered by ERISA. See the Department's brief in Stone v. Stone, No. 78-2313 (9th Cir.) (app. pending). In our view, and based on the reasoning there, the decree of the 12th Judicial Court falls within the implied exception to section §206 of ERISA.

The Department of the Treasury has been furnished with a copy of this letter and concurs with the result reached herein.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs

Enclosure