**U.S. Department of Labor**

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

Reply to the Attention of:

OPINION 81-54A
SECTION 3(7), 3(8)

JUN 22 1981

Mr. Richard M. Cosgrove
Executive Director
Lansing Mechanical Contractors Association
421 Seymour Avenue
Lansing, Michigan 48933

Re: Arthur J. Faggion Scholarship Fund: P-2377A

Dear Mr. Cosgrove:

This is in response to your letter of February 15, 1980 regarding the Arthur J. Faggion Scholarship Fund (the Fund) requesting an advisory opinion from the Department of Labor (the Department) with respect to certain reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974 (ERISA) for the Fund, which you recognize as an employee welfare benefit plan under ERISA. Specifically, you request that the Department provide an advisory opinion as to (1) which individuals should be counted as participants in the Fund, and (2) whether the Fund is exempt from certain reporting and disclosure requirements under ERISA.

Your request and the materials submitted therewith include the following facts and representations:

1. The Fund is a scholarship trust established by a trust agreement between the Plumbers and Pipefitters Union #338 (the Union), its members, and the Lansing Mechanical Contractors Association (the Association). The purpose of the Fund is to provide scholarship benefits to children of the dues-paying members of the Union and certain employers or shareholder-employees of employers.

2. The Fund receives funds from employer contributions pursuant to a collectively bargained union contract at the rate of 4 cents per hour worked for each Union member.

3. Scholarship awards may be granted only to the children of eligible individuals. Eligibility in the Fund is limited to an individual who is:

(a) a dues paying Union member who was not delinquent in paying dues as of December 31 of the prior year and had 3,000 hours of work under the collectively bargained agreement during the three years ending with that date,

(b) an employer or shareholder-employee of the employer on December 31 of the prior year who paid wages to a member or members of the Union under the collectively bargained agreement for at least 3,000 hours during the three years ending with that date, or

(c) a deceased individual who at the time of death met the requirements of (a) or (b).

4. The duties of the Fund trustees include:

(a) designating a bank or trust company as depository of the monies of the Fund and providing for the withdrawal of such monies;

(b) receiving and depositing in the name of the Fund such monies as are received pursuant to the collective bargaining agreement;

(c) paying out such monies to the designated recipients of the awards;

(d) paying the reasonable costs and expenses of maintaining and administering the Fund;

(e) investing any unused portion of the monies as it deems appropriate in obligations of the federal and state governments and in obligations of banks, savings and loan and building and loan institutions.

With respect to your inquiry concerning which individuals should be counted as participants in the Fund, section 3(7) of ERISA defines a participant to be "any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or member of such organization, or whose beneficiaries may be eligible to receive any such benefit." Section 3(8) of ERISA defines a beneficiary to be "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder."

In accordance with the statements you submitted and consistent with the language of section 3(8) of ERISA, we believe those children of eligible individuals who are or may become entitled to a benefit (scholarship) by the terms of the Fund would be beneficiaries. We further believe that those individuals meeting the eligibility criteria of the Fund would be participants in accordance with section 3(7) of ERISA.

With respect to your inquiry concerning whether the Fund is exempt from certain reporting and disclosure requirements of ERISA, the Department's regulation 29 C.F.R. §2520.104-26 does contain a limited reporting exemption for certain dues financed welfare benefit plans as noted in your letter. However, this regulation applies "only to welfare benefit plans maintained by an employee organization … paid for out of the employee organization's assets, which are derived wholly or partly from membership dues …"

Since scholarship benefits, as provided by the Fund, are funded by regular contributions and are held in trust, we believe the limited exemption provided by section 2520.104-26 does not apply. Therefore we are of the opinion that the Fund, as currently administered, would not be exempt from complying with the Department's regulations regarding the summary plan description, summary of material modifications, annual report and summary annual report. However, if the Fund has fewer than 100 participants it may be eligible for the waiver of certain requirements provided by section 2520.104-46 of the annual reporting regulations (copy enclosed). This section provides that the plan administrator of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year is not required to –

(1) Engage an independent qualified public accountant to conduct an examination of the financial statements of the plan;

(2) Include within the annual report the financial statements and schedules prescribed in section 103(b) of the Act and §§2520.103-1, 2520.103-2, and 2520.103-10; and

(3) Include within the annual report a report of an independent qualified public accountant as prescribed in section 103(a)(3)(A) of the Act and §2520.103-1.

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