

U.S. Department of Labor

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



Reply to the Attention of:
Pension and Welfare Benefit Programs

OPINION 81-57A
SECTION 3(2)

JUN 29 1981

Mr. Gary W. Maeder
Kindel & Anderson
Twenty-Sixth Floor
555 South Flower Street
Los Angeles, California 90071

Dear Mr. Maeder:

This is in response to your letter of December 16, 1980, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether an individual retirement account (IRA) established by Christopher Stone to receive his distribution from his previous employer's tax-qualified retirement plan is subject to title I of ERISA.

You represent that Pacific Fabric Printers, Inc. (the Applicant), is owned by Christopher Stone, Trustee of the Christopher Stone Separate Property Revocable Trust U/D/T dated June 8, 1973, as amended and completely restated July 10, 1980. Several years ago, Mr. Stone's employment with another corporation was terminated and he received a distribution of the full amount credited to his accounts under that company's tax-qualified retirement plan. At that time he transferred the amount which he received (except for that portion thereof, if any, considered to have been contributed by him) into a "rollover" IRA established solely by Mr. Stone. You represent that no employer or employee organization has had, or will have, any part in establishing or maintaining the IRA.

You also indicate that the Applicant is seeking an administrative exemption from the prohibited transaction provisions in connection with a proposed loan by the IRA to the Applicant, of which Mr. Stone is an employee. This opinion does not make any determination with regard to such matters.

Section 3(2)(A) of title I of ERISA defines an "employee pension benefit plan" and a "pension plan" as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program - (i)

provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan."

Regulation 29 C.F.R. §2510.3-2(d) issued by the Department of Labor clarifies the definition of employee pension benefit plan with regard to individual retirement accounts. Regulation section 2510.3-2(d)(1) provides:

For purposes of Title I of the Act and this chapter, the terms "employee pension benefit plan" and "pension plan" shall not include an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1954 (hereinafter "the Code") and an individual retirement bond described in section 409 of the Code, provided that –

- (i) no contributions are made by the employer or employee association;
- (ii) participation is completely voluntary for employees or members;
- (iii) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program to employees or members, to collect contributions through payroll deductions or dues checkoffs and to remit them to the sponsor; and
- (iv) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

This advisory opinion is limited to determining whether the IRA you describe meets the requirements set forth in regulation section 2510.3-2(d)(1)(i) through (iv) without expressing any opinion as to whether it is the type of fund to which regulation section 2510.3-2(d) is properly applied.

On the basis of your representations, the Department has concluded that the IRA satisfies conditions (i) and (ii) of regulation section 2510.3-2(d). The Department has also concluded that the IRA would not fail to meet conditions (iii) and (iv) of the regulation solely because the IRA lends money to the Applicant, provided that the terms of the loan are such that payment of interest or penalties would not be the equivalent to a contribution by the Applicant to the IRA.

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