

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-64A
SECTION 3(32), 4(b)(1), 3(16), 409(b), 101(a), 104(a)(1)

JUL 24 1981

Carroll J. Savage, Esq.
Ivins, Phillips & Barker
1700 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Savage:

This is in response to your request on behalf of Public Service Electric and Gas Company (PSE & G) for an advisory opinion concerning the application of the reporting and disclosure requirements of Part 1 of title I of the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to your letter.

In connection with your request you provide the following facts and representations:

On September 19, 1980, PSE & G and New Jersey Transit Corporation (NJTC), a public corporation established by the New Jersey Transportation Act of 1979 (Chapter 150 of the New Jersey Laws of 1979) entered into a stock purchase agreement providing for the sale and transfer by PSE & G to NJTC of all of the outstanding capital stock of PSE & G's wholly-owned subsidiary, Transport of New Jersey (TNJ), and indirectly TNJ's wholly-owned subsidiary, Maplewood Equipment Company (MEC). This sale was consummated on October 14, 1980. TNJ maintains three defined benefit plans for its employees and MEC maintains two defined benefit plans. The plan years of the three TNJ plans run from March 1 to February 28 and the MEC plans have plan years running from May 1 to April 30. You state that although NJTC is expected to maintain and fund the TNJ and MEC plans, there is no specific agreement to this effect other than existing labor agreements. However, in conjunction with the sale, fully insured group annuity contracts have been purchased as assets of the TNJ and MEC plans which provide fully for the accrued benefits under the TNJ and MEC plans as of June 30, 1980. You also indicate that the State of New Jersey may change the trustees of the plans and the membership of the committees which are the plan administrators.

On the basis of the above facts, you request an advisory opinion that --

1. the change of ownership of TNJ and MEC does not constitute a plan termination or change in plan year requiring the accelerated filing and distributing of annual reports and summary annual reports for the TNJ and MEC plans with respect to plan years beginning March 1, 1980, and May 1, 1980; and

2. the members of the administrative committees of the TNJ and MEC plans who resign or who are replaced on account of the sale to NJTC are not responsible:

(a) for filing annual reports with the Department of Labor (the Department) for the TNJ and MEC plans for any part of the plan years beginning March 1, 1980, and May 1, 1980;

(b) for distributing summary annual reports to participants and beneficiaries of the TNJ and MEC plans for any part of the plan years beginning March 1, 1980, and May 1, 1980; and

(c) for filing with the Department and distributing to plan participants and beneficiaries, summaries of any material modifications to the TNJ and MEC plans occurring during the plan years beginning March 1, 1980, and May 1, 1980; and

3. the answers to questions one and two do not change if the TNJ and MEC plans are considered to be "governmental plans" under ERISA section 3(32) after the sale to NJTC.¹

In support of your request, you maintain that: the mere fact that the stock of a sponsoring corporation is sold to another corporation in the middle of a plan year does not give rise to a plan termination or change in plan year for ERISA reporting purposes; the responsibility for complying with the reporting and disclosure requirements of title I of ERISA for the year of the stock sale should fall on the individuals who are the plan administrators at the close of the plan year and should not be the responsibility of those individuals who were plan administrators at some earlier point in the plan year; and the answers to the first two questions should not be different merely because the purchaser is an instrumentality of a State and the plans have changed from covered to noncovered status under section 4(b)(1) of ERISA.

For purposes of the reporting and disclosure requirements of Part 1 of title I, the Department would not consider an employee benefit plan to have changed its plan year solely by reason of a change in the ownership of a plan sponsor. Assuming that the plans of TNJ and MEC have not elected to change their respective plan years, and that such a change is not required under the terms of the documents governing the operation of the plans, it is the opinion of the Department that for purposes of Part 1 of title I of ERISA, the change in ownership of TNJ and MEC does not constitute an event requiring accelerated filing and distribution of annual reports and

¹ In your supplementary letter of January 29, 1981, you state that item 3 is not a request for an opinion regarding whether the TNJ and MEC plans are "governmental plans" within the meaning of section 3(32) of ERISA by reason of the sale to NJTC. Rather, you request an advisory opinion which is based on the assumption that the TNJ and MEC plans became governmental plans after the sale to NJTC.

summary annual reports for TNJ and MEC plans with respect to plan years beginning March 1, 1980, and May 1, 1980.²

With regard to your second request, Part 1 of title I imposes certain reporting and disclosure obligations on the administrator of a plan subject to the provisions of Part 1 of title I. It is, therefore, the responsibility of the "administrator", as that term is defined in section 3(16) of ERISA, to ensure that the reporting and disclosure requirements of Part 1 are satisfied in accordance with the provisions of ERISA and the regulations issued thereunder.

The term "administrator" is defined in section 3(16) to mean, in relevant part, "the person specifically so designated by the terms of the instrument under which the plan is operated." It appears from your letter that each plan has an administrative committee which is the designated administrator for the plan. It is the view of the Department that, consistent with section 409(b) of the fiduciary provisions of ERISA,³ a member (or members) of an administrative committee who resigns or who is replaced would not be liable for violations of the reporting and disclosure requirements which occur subsequent to his resignation or replacement, provided such a member during his service on the committee engaged in no acts which would directly or indirectly cause such a violation.

It is the opinion of the Department that, subject to the aforementioned proviso, members of the administrative committees of the TNJ and MEC plans who resign or who are replaced on account of the sale to NJTC would not be responsible: (a) for filing annual return/reports with the Department for the TNJ and MEC plans for any part of the plan years beginning March 1, 1980, and May 1, 1980, (b) for distributing summary annual reports to participants and beneficiaries of the TNJ and MEC plans for any part of the plan years beginning March 1, 1980, and May 1, 1980, and (c) for filing with the Department and distributing to participants and beneficiaries summaries of any material modifications to the TNJ and MEC plans occurring during the plan years beginning March 1, 1980, and May 1, 1980, provided that such members are not members of the administrative committees of subject plans at the time compliance with the aforementioned reporting and disclosure requirements is either undertaken or required pursuant to the provisions of Part 1 of title 1 of ERISA and the regulations issued thereunder.

Concerning your last request, the responses made herein by the Department to the above-described inquiries would not be affected by the fact that the TNJ and MEC plans may be considered "governmental plans" under section 3(32) of ERISA after the sale to NJTC.

² The Department expresses no opinion on whether under the facts contained in your letter a termination has occurred for purposes of title IV of ERISA or the Internal Revenue Code of 1954, as amended.

³ Section 409(b) provides that "[n]o fiduciary shall be liable with respect to a breach of fiduciary duty under this title [title I] if such a breach was committed before he became a fiduciary or after he ceased to be a fiduciary."

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs

Enclosure