

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 84-07A
Sec. 103(a)(3)

JAN 20 1984

Ms. Sadie L. Nieves
Pension Planners of Puerto Rico
The Wyatt Company
Suite 306
Pan Am Building
255 Ponce de Leon Avenue
Hato Rey, Puerto Rico 00917

Dear Ms. Nieves:

This is in response to your letter of October 6, 1983, on behalf of Searle & Co., concerning the application of the requirements under section 103(a)(3)(A) 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 you.

Specifically, you have requested an opinion as to whether the retirement plan (the Plan) sponsored by Searle & Co. can exclude from its annual return/report (Form 5500) filings the report of an independent qualified public accountant. You indicate that the Plan has about 400 participants, and all of the Plan's assets are held in a separate trust maintained by Banco de Ponte, the trustee of the Plan. Banco de Ponte, according to your letter, is a local bank authorized by the Department of Treasury to perform as trustee and is subject to periodic audit and examination by both the Commonwealth of Puerto Rico and Federal agencies.

You believe that, because all the Plan's assets are held by a bank and an actuarial report detailing the Plan's general situation is produced and certified annually by an enrolled actuary, the Plan is incurring unnecessary expenses in engaging an independent qualified public accountant. In this regard, you point out that, under Department of Labor regulations, accountants need not express an opinion as to certifications provided by a bank or an enrolled actuary.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that:

Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public

accountant, who shall conduct an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report . . . are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards.

Section 103(a)(3)(A) further provides that the opinion by the independent qualified public accountant shall be made a part of the annual report. Section 103(a)(3)(B) of ERISA provides that in offering his opinion, the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

Department regulation 29 C.F.R. §2520.103-8, which interprets and implements section 103(a)(3)(C), provides that the examination and report of an independent qualified public accountant need not address any statement or information regarding plan assets held by a bank or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statement or information is transmitted and certified to the plan administrator in accordance with 29 C.F.R. §2520.103-5. However, while the administrator of a plan may limit the scope of the accountant's examination and report under section 103(a)(3)(C) and §2520.103-8, if a plan is required under 29 C.F.R. §2520.103-1 to engage an accountant to render an opinion with respect to the financial statements of the plan, an exemption from the audit requirements of section 103(a)(3)(A) is not provided under section 103(a)(3)(C) and §2520.103-8 solely because the plan's assets are held by a bank or insurance company and certification has been provided under §2520.103-5. The financial statements of the plan as a whole remain subject to the audit requirements prescribed in section 103(a)(3)(A) and §2520.103-1. It should also be noted that while section 103(a)(3)(B) permits independent qualified public accountants to rely on the correctness of any actuarial matters certified to by an enrolled actuary, such reliance by the accountant is discretionary and does not limit the requirement under section 103(a)(3)(A) that the accountant conduct the examination of the plan in accordance with generally accepted auditing standards.

Accordingly, based on the information contained in your letter, it is the opinion of the Department that, while the examination and report of the Plan's accountant may be limited in accordance with ERISA section 103(a)(3)(C) and §2520.103-8, the administrator of the Plan is not exempt from the requirements of section 103(a)(3)(A) of ERISA to engage an independent qualified public accountant and to include the opinion of the accountant as part of the Plan's annual report.

While we recognize that the cost of an audit performed by an independent qualified public accountant may result in additional costs to a plan, it is the view of the Department that absent an independent certified audit participants would not be assured that amounts reported as being received and disbursed at the direction of the Plan's administrator or other authorized parties

have been properly determined in accordance with the terms of the Plan and that information included in the financial statements and schedules has been presented in compliance with the Department's requirements for reporting and disclosure under ERISA.

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

Sincerely,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs