U.S. Department of Labor

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

Reply to the Attention of:

OPINION NO. 84-09A
Sec. 406(a)(1)(A), 406(a)(1)(D), 406(b)(2), 3(14)

FEB 16 1984

Laraine S. Rothenberg, Esquire
Proskauer, Rose Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Re: Time Incorporated
Identification Number F-2778A

Dear Ms. Rothenberg:

This is in response to your request for an advisory opinion on behalf of Time Incorporated (Time) under sections 3(14), 406(a)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 4975(c)(1) and 4975(e)(2) of the Internal Revenue Code of 1954 (the Code).

You represent that Time is a New York corporation whose stock is traded on the New York Stock Exchange. The Time Payroll Based Stock Ownership Plan (Time-PAYSOP) is a payroll based tax credit employee stock ownership plan established by Time effective as of January 1, 1983. The Time Incorporated Stock Investment Plan (TISIP) is an employee stock ownership plan established by Time effective as of November 1, 1977. Certain employees of Time and of designated affiliates are eligible to participate in the TISIP. Limited contributions made to the TISIP by employees and their employers must be used to purchase Time common stock.

Inland Container Corporation (Inland Container) and Temple-Eastex Incorporated (Temple-Eastex) are Delaware corporations which are wholly-owned subsidiaries of Time. Time has formed a new subsidiary, Temple-Inland Inc. Time will transfer its Temple-Eastex and Inland Container stock to Temple-Inland in exchange for all of the common stock of Temple-Inland.

You represent that in December 1983, Time reincorporated in Delaware. All of Time's outstanding stock was automatically converted into shares of the Delaware corporation with the same terms and conditions as prior to the reincorporation. On or about January 26, 1984, Time will distribute 90 percent of the Temple-Inland common stock to Time's common stockholders in a transaction intended to qualify as tax-free under section 355 of the Code, assuming shareholder approval. The Temple-Inland stock is expected to be listed and traded on the New York Stock Exchange. As shareholders of Time, the Time-PAYSOP and the TISIP will receive Temple-Inland common stock.

Temple-Inland and those corporations currently participating in the Time-PAYSOP and/or the TISIP which will be spun-off from Time (Temple-Inland Group) will adopt the Temple-Inland PAYSOP effective January 1, 1984. The Temple-Inland PAYSOP will be identical to the Time-PAYSOP in all material respects.

As part of the spin-off, the Time-PAYSOP will transfer to the Temple-Inland PAYSOP in a trust-to-trust transfer the account balances (consisting of Time and Temple-Inland common stock) of employees in the

Temple-Inland Group within 90 days after the spin-off except for the accounts of those employees who elect prior to the spin-off to receive a distribution of their account balances in the Time-PAYSOP. In addition, the TISIP will transfer to either the Inland Container Corporation Savings and Stock Purchase Plan for Salaried Employees or the Temple-Eastex Savings and Stock Purchase Plan in trust-to-trust transfers the account balances (consisting of Time and Temple-Inland common stock) of employees in the Temple-Inland Group except for those employees who elect prior to the spin-off to receive a distribution of their account balances.

As of June 30, 1983, the Time-PAYSOP held 212,790 shares of Time common stock and the TISIP held 1,109,720 shares of Time common stock out of 58 million shares outstanding. It is anticipated that 0.36 shares of Temple-Inland common stock will be distributed to Time common shareholders for each share of Time common stock held.

You represent that, pursuant to Code requirements, the Time-PAYSOP must dispose of all Temple-Inland common stock received by it in the spin-off within 90 days after the spin-off. Similarly, the Temple-Inland PAYSOP must, within 90 days after the trust-to-trust transfers dispose of all Time common stock it received. Moreover, the Code and its regulations require that the Time-PAYSOP distribute only Time common stock and that the Temple-Inland PAYSOP distribute only Temple-Inland common stock. The TISIP generally may distribute only Time stock to Time employees although it may, under the Code, invest up to 20 percent of its assets in non-employer securities.

After the trust-to-trust transfers, in order to effectuate the required dispositions of non-employer securities, the Time-PAYSOP will exchange all of the Temple-Inland common stock held by it for Time common stock held by the Temple-Inland PAYSOP. You further propose to exchange any remaining Time common stock in the Temple-Inland PAYSOP for Temple-Inland common stock held by the TISIP.[1] All such exchanges will be based on the relative fair market values of Time and Temple-Inland common stock.

You further represent that it is contemplated that responsibility for authorizing the sale or other disposition of Temple-Inland common stock by the Time-PAYSOP and the TISIP and the manner of such sale or disposition will be vested in investment committees, whose members will be appointed by the Finance Committee of Time's Board of Directors. The Time-PAYSOP and the TISIP will each have its own investment committee comprised of the same individuals. The investment committees of the Time-PAYSOP and the TISIP will not have any members in common with the Temple-Inland administrative committee which is responsible for making decisions regarding the proposed exchange transactions.[2]

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[1] To the extent that the proposed exchanges of stock are insufficient to dispose of all Temple-Inland common stock held by the TISIP, it is contemplated that the TISIP will sell such remaining Temple-Inland common stock on the open market, as required to meet distribution or fiduciary responsibility requirements, and reinvest the proceeds in Time common stock. All brokerage fees incurred incident to such sales will be paid by Time. Moreover, should the TISIP buy Time common stock on the open market, all brokerage commissions incident to such purchases will be paid by Time.

[2] However, the Finance Committee of Time's Board of Directors -- which will be responsible for appointing the members of the Time-PAYSOP and the TISIP investment committees--has two members who also are on the Temple-Inland PAYSOP administrative committee. These two members of Time's Finance Committee will abstain from any participation in the appointment of the members of the Time-PAYSOP and the TISIP investment committees, including physically absenting themselves from all discussions relating to the selection of such members as well as from voting on this matter. In addition, Time's Board of Directors -- which will be responsible for approving the amendments to the Time-PAYSOP and TISIP -- has two members who are on the Temple-Inland PAYSOP administrative committee. These two members of Time's Board of Directors will abstain from any participation in the

Moreover, the Time-PAYSOP, the TISIP and the Temple-Inland PAYSOP do not and will not provide services to one another.

You have asked for advisory opinions to the effect that:

(1) The Time-PAYSOP and the Temple-Inland PAYSOP are not parties in interest with respect to each other under ERISA section 3(14), or disqualified persons with respect to each other under section 4975(e)(2) of the Code.

(2) The TISIP and the Temple-Inland PAYSOP are not parties in interest with respect to each other under ERISA section 3(14), or disqualified persons with respect to each other under section 4975(e)(2) of the Code.

(3) An exchange of Time common stock held by the Temple-Inland PAYSOP for Temple-Inland common stock held by the Time-PAYSOP would not be a prohibited transaction under ERISA section 406(a)(1)(A) or under Code section 4975(c)(1)(A), or under any other provision of ERISA section 406(a)(1) or Code section 4975(c)(1).

(4) An exchange of Time common stock held by the Temple-Inland PAYSOP for Temple-Inland common stock held by the TISIP would not be a prohibited transaction under ERISA section 406(a)(1)(A) or under Code section 4975(c)(1)(A), or under any other provision of ERISA section 406(a)(1) or Code section 4975(c)(1).

(5) The proposed exchanges of stock would not be prohibited transactions under section 406(b)(2) of ERISA.

Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code has been transferred with certain exceptions not here relevant to the Secretary of Labor. Therefore, the references in this letter to specific sections of ERISA refer also to the corresponding sections of the Code.

<u>Issues 1 & 2</u>
The term "party in interest" with respect to a plan is defined in section 3(14) of ERISA. Where none of the relationships described in section 3(14) are found to exist, two plans would not be parties in interest with respect to one another. You represent that the Time-PAYSOP and the Temple-Inland PAYSOP are not parties in interest with respect to each other under any of the categories described in section 3(14) of ERISA. Your submission contains similar representations with respect to the TISIP and the Temple-Inland PAYSOP. Based solely on the facts and representations contained in your submission, the Department has concluded that the Time-PAYSOP and the Temple-Inland PAYSOP are not parties in interest with respect to each other, and the TISIP and the Temple-Inland PAYSOP are not parties in interest with respect to each other, under section 3(14) of ERISA.

<u>Issues 3 & 4</u>
Section 406(a) of ERISA provides, in pertinent part, that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that the transaction constitutes a direct or indirect (1) sale or exchange, or leasing, of any property between the plan and a party in interest, or (2) a transfer to, or use by or for the benefit of, a party in interest of any assets of the plan. The transactions between the Time-PAYSOP and the Temple-Inland PAYSOP, and the TISIP and the Temple-Inland

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amendment to the Time-PAYSOP and TISIP; including physically absenting themselves from all discussions relating to the amendments as well as from voting.

PAYSOP are not transactions between employee benefit plans and parties in interest with respect thereto, and do not appear to be for the benefit of a party in interest. Therefore, it is the Department's view that, based on your representations, the transactions are not prohibited by section 406(a) of ERISA.

<u>Issue 5</u>
Section 406(b)(2) of ERISA provides that a fiduciary with respect to a plan shall not in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. You represent that the administrative committees of the TISIP and the Temple-Inland PAYSOP, and the administrative committees of the Time-PAYSOP and the Temple-Inland PAYSOP do not have any members in common. It does not appear that there would be an adversity of interests involved in each administrative committee’s decision to exchange stock on behalf of its respective plan. Accordingly, based on your representations, it is our view that the committees' decision to exchange the stock described above would not, in itself, constitute a violation of section 406(b)(2) of ERISA.

The Department notes that it is expressing no opinion regarding whether the transactions contemplated satisfy the general fiduciary responsibility provisions of section 404(a) of ERISA.

This letter is an advisory opinion under ERISA Procedure 76-1 (41 FR 36281, August 27, 1976). Section 10 describes the effect of advisory opinions.

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs