

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



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86-09A
Sec.

Mr. Mark G. Heacox
Account Executive
Wittner Hanahan & Peck, Inc.
P.O. Box 57128
St. Petersburg, Florida 33701-7128

Dear Mr. Heacox:

This is in response to your letter concerning the application of certain reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA) to the ACE Auto Parts Company, Inc. Employee Benefit Plan (the Plan). Specifically, you have inquired whether the Plan may avail itself of the limited exemption for annual reporting by unfunded and certain insured plans pursuant to 29 C.F.R. §2520.104-44.

In your letter and in a telephone conversation with Ronald D. Allen of this Office on September 9, 1985, you provided the following facts and representations. The Plan was established to provide medical and life insurance benefits for the 143 employees of the ACE Auto Company, Inc. (the Company). The Plan is funded by Company and employee contributions which are held in a 501(c)(9) trust (the Trust). Medical claims are paid directly from the Trust, although the Plan does maintain stop loss insurance. All life insurance benefits are fully insured. The Company contributes to the Trust amounts necessary to fund the medical benefits for employees and to pay insurance premiums. Employees contribute amounts for medical coverage for their dependents.

Section 103(a)(3)(A) of ERISA and 29 C.F.R. §2520.103-1(b) provide, in relevant part, that the administrator of an employee benefit plan shall engage an independent qualified public accountant to conduct an examination of any financial statements, books, and records of the plan 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 and in conformity with generally accepted accounting principles. Also, unless otherwise exempted, section 103(b) of ERISA and §2520.103-1(b) require that the annual report shall include a report of an independent qualified public accountant concerning the financial statements and schedules required to be a part of the annual report.

Regulation §2520.104-44, in relevant part, provides a limited exemption from the reporting requirements of ERISA for welfare plans whose entire benefits are (i) paid solely from the

general assets of the employer or employee organization maintaining the plan; (ii) provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any state, the premiums for which are paid directly by the employer from its general assets, provided that any plan assets held by the insurance company or similar organization are held solely in the general account of such company or organization; or (iii) partly in the manner specified in (i) and partly in the manner specified in (ii).

The Department determined in promulgating §2520.104-44 that it would be inappropriate, and serve no useful disclosure purpose, to require plans which have no assets or liabilities, other than insurance contracts or past due insurance premiums in the case of an insured plan, to prepare financial statements and engage an independent qualified public accountant. On the other hand, the Department also determined that where funds pass through an intermediary trust or other entity, for even a limited period of time, there is an opportunity for fund management that should be subject to financial reporting and accounting.

Because the Plan pays benefits and premiums from a trust, rather than from the general assets of the employer maintaining the Plan, and has assets and liabilities other than insurance contracts and past due insurance premiums, it is the Department's opinion that the Plan does not meet the requirements for the limited exemption under §2520.104-44. Accordingly, based on the information provided, the ACE Auto Parts Company, Inc. Employee Benefit Plan is required to engage an independent qualified public accountant and include the accountant's report as part of its annual report.

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

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations

Enclosure