

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



JUN 25 1990

90-17A

Mr. David J. Cartano
Barton, Klugman & Oetting
333 South Grand Avenue - 37th Floor
Los Angeles, California 90071-1599

Dear Mr. Cartano:

This is in reply to your correspondence on behalf of Jacobs Engineering Group Inc. (Jacobs) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, your correspondence describes an Employee Stock Purchase Plan (the Plan) approved by the Jacobs Board of Directors on December 15, 1988 and under which stock options were first granted March 1, 1988. You further state that the Plan is intended to qualify under section 423 of the Internal Revenue Code (the Code) and you request an advisory opinion to confirm that the Plan is not an employee benefit plan within the meaning of section 3(3) of title I of ERISA.

Your correspondence contains the following facts and representations. The Plan is designed to encourage employees of Jacobs to purchase Jacobs common stock and thereby acquire an ownership interest in their employer. Stock option grants are made to most employees of Jacobs or of any specified subsidiary. Employees who exercise the option to acquire stock authorize a payroll deduction at six-month intervals, with the resulting funds held interest free in the company's general assets. As soon as practical after the end of each six month period, the Plan committee purchases company common stock in the employee's name at 90% of the fair market value to be determined at the first day of the six month option period or the last day of such period, whichever results in the lower purchase price.

The Plan provides for refund of all payroll deductions not used to purchase stock because of an employee's termination of employment. Stock options may not be exercised except by the participating employee unless transferred by will or under the laws of descent and distribution. Stock subject to purchase under the Plan may be authorized but unissued shares or shares reacquired by Jacobs from any person.

There appear to be no restrictions on resale of stock purchased by employees through the Plan. Nor do there appear to be any restrictions on voting rights or on receipt of dividends by employees once stock is issued. No trust is established in connection with holding payroll deductions for stock purchase under the Plan.

The term "employee benefit plan" is defined in section 3(3) of ERISA to mean "an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan."

The terms "employee welfare benefit plan" and "employee pension benefit plan" are defined in section 3(1) and 3(2) of ERISA, respectively. Section 3(1) defines an "employee welfare benefit plan" as:

. . . any plan, fund, or program which was heretofore or is hereafter established or maintained. . . for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of

the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

The Plan does not provide any of the types of benefits described in section 3(1) of ERISA and, thus, by its terms, is not a welfare plan under title I of ERISA.

The term "employee pension benefit plan" is defined in section 3(2)(A) of ERISA 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." ERISA section 3(2)(B) does not appear applicable to the factual situation you present.

By its express terms, the Plan does not appear to provide retirement income or result in a deferral of income to termination of employment or beyond. Therefore, it is the opinion of the Department of Labor (the Department) that the Plan, by its express terms, is not a pension plan within the meaning of section 3(2)(A) of ERISA. Our conclusion in this regard is based solely on your representations concerning Plan terms. You should be aware that the Plan can be viewed by the Department as a pension plan as a result of surrounding circumstances. Based on the facts provided, the Plan might be regarded as a pension plan as a result of surrounding circumstances if it is administered in a manner that has the effect of providing retirement income to employees, if it results in a deferral of income by employees extending to termination of covered employment or beyond, or if communications to Plan participants suggest that the Plan is established or maintained for the purpose of providing retirement income or to defer income to the termination of covered employment or beyond. For example, if an employer or any person acting directly or indirectly in the interest of an employer prevents or discourages participants' requesting or receiving a distribution of their property or reselling stock acquired under the arrangement, the Department may view the arrangement as a pension plan within the meaning of section 3(2)(A) of ERISA.

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

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations