

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 80-33A  
403, 404(a)(1), 406, 407

JUN 3 1980

Mr. John Thomas Kenney  
Manager, Benefit Programs  
Chrysler Corporation  
P.O. Box 1919  
Detroit, Michigan 48288

Dear Sir:

I am writing in reply to your letter of April 14, 1980, in which you seek an Advisory Opinion concerning the lawfulness under the Employee Retirement Income Security Act of 1974 (ERISA) of a certain understanding denominated the "Letter Agreement" or "Agreement" between the Chrysler Corporation (Chrysler) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). That agreement, furnished with your request, was the only document submitted for the Department's consideration. We have met with representatives of Chrysler and the UAW and, among other things, pointed out that the intended construction of the agreement is not in all respects clear. You have, however, made certain representations regarding the manner in which the agreement embodied in the memorandum of understanding is expected to work in practice.

Based on these representations and on our reading of the memorandum submitted for our consideration, we have reached the following conclusions regarding the agreement as it is to be applied. The pension plan assets are now and will continue to be held in trust and exclusively managed by trustees. In order to assist the trustees by providing an expanded range of information concerning investment opportunities, Chrysler and the UAW have agreed to establish an Investment Advisory Committee consisting of three members appointed by Chrysler and three members appointed by the UAW. The primary functions of this Committee will be (1) to obtain information concerning and select and recommend to the trustees of the Pension Plan, geographical areas of communities in which residential mortgage financing could be provided by the Plan; and (2) on an annual basis, to recommend to the trustees opportunities for investments in debt obligations of nursing homes, nursery schools, federally qualified health maintenance organizations, hospitals or similar nonprofit institutions in communities where there are large concentrations of UAW members. The residential mortgage investment opportunities which the Committee will seek to identify will be primarily mortgages on single and multiple family dwellings (including cooperatives and condominiums), the purchase price of which is equal to or

below the average purchase price of similar housing in the community involved. It is intended that such mortgage financing recommendations will be for financing at rates and upon terms prevailing in the communities selected and will be available to the general public, including UAW members, but shall not be limited only to UAW members. For each year this agreement is in effect, the Committee is expected to make sufficient recommendations for such investments to permit the trustees to consider investment of 10 percent of the amount of Chrysler contributions available for investment after deducting the portion of the benefits payable for such year which is in excess of investment income (excluding realized and unrealized capital gains).

We understand that the Committee will act by majority vote, and in the event of a tie, the deciding vote will be cast by an impartial chairman chosen pursuant to the collective bargaining agreement.

It also appears that for each year this agreement is in effect, the Union may draw up a list of not more than five companies which conduct business with South Africa but which have not supported the elimination of racial discrimination there in specified ways, and recommend that the trustees make no new investment in such companies. You indicate that any such recommendations will not relate to any portion of the Pension Fund invested in common or collective trust funds or pooled investment funds, or to any insurance contract constituting part of the Pension Fund.

The trustees, in the exercise of their discretion, may reject any or all recommendations of the Committee and the Union or invest more funds in projects identified by the Committee than recommended. Our reading of the memorandum of understanding between Chrysler and the Union in light of your subsequent representations indicates that the trustees will retain full investment discretion regarding the assets of the Pension Fund, and that it is fully understood that the trustees must exercise this discretion in accordance with the requirements of the Act. Accordingly, the trustees will possess full authority to implement or not to implement any recommendation made to them by either the Committee or the Union. In this regard, you represent that neither Chrysler nor the Union will attempt publicly or privately to influence the trustees regarding specific recommendations of the Committee or the Union.

It appears to us that the purpose of the structure established by this agreement is to call to the attention of the Fund trustees areas of investment opportunity which, although perhaps not generally explored by certain traditional investment managers, may nonetheless be prudent and potentially profitable. As you are aware, Title I, Subtitle B, Part 4 of the Act contains a number of provisions regarding fiduciary responsibility with respect to employee benefit plans. Section 403 of the Act provides generally that the trustee of a plan shall have exclusive authority and discretion to manage and control the assets of the plan. Pursuant to section 404 of the Act, a trustee or other fiduciary must discharge his duties with respect to a plan solely in the interests of plan participants and beneficiaries, and in a prudent manner in accordance with section 404(a)(1)(B) of the Act and regulation 29 CFR §2550.404a-1. Further, a trustee or other fiduciary must not cause the plan to engage in any of the prohibited transactions in sections

406(a) or 407 of the Act. The trustee or fiduciary himself must not engage in any of the prohibited transactions listed in section 406(b) of the Act, which describes certain transactions involving self-dealing and conflicts of interest.

If the memorandum of understanding submitted for our consideration is construed and put into practice in the manner outlined above, it is the opinion of the Department that such effectuation of the agreement between Chrysler and the UAW would not of itself involve violations of the provisions of Title I, Subtitle B, Part 4 of the Act and the regulations promulgated pursuant thereto. However, the Department, by this letter, expresses no opinion regarding the lawfulness of any specific transaction which may be undertaken by the Union, the Committee or the trustees in connection with this agreement or otherwise.

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs  
Labor-Management Services Administration

cc: Mr. Marc Stepp