

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-34A
Sec. 3(4)

JUL 22 1982

Bruce A. Bordine, Trustee
Bordine's Better Blooms, Inc.
1835 S. Rochester Road
Rochester, Michigan 48063

Dear Mr. Bordine:

This is in reply to your letters of December 15, 1981, and February 19, 1982, requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Bordine's Better Blooms Voluntary Employee Benefit Trust (the Trust) qualifies for the limited exemption under Department of Labor regulation 29 C.F.R. §2520.104-20, regarding the filing of Forms 5500 for employee welfare benefit plans with fewer than 100 participants.

You state that the Trust is a voluntary employee beneficiary association under section 501(c)(9) of the Internal Revenue Code. Its purpose is to provide certain health benefits, such as hospitalization and medical benefits, to eligible employees of Bordine's Better Blooms, Inc. (the Employer). Benefits are not paid from the general assets of the Employer or exclusively through insurance contracts but are paid solely from the general assets of the Trust. The Employer does contribute to the Trust to fund the benefits. You further advise that there are fewer than 100 participants in the program.

Regulation section 2520.104-20 provides a limited exemption to the reporting and disclosure requirements of title I of ERISA. Regulation section 2520.104-20(b) provides:

- (b) Application. This exemption applies only to welfare benefit plans-
 - (1) Which have fewer than 100 participants at the beginning of the plan year;
 - (2)(i) For which benefits are paid as needed solely from the general assets of the employer or employee organization maintaining the plan, or
 - (ii) The benefits of which are 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 or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that contributions by

participants are forwarded by the employer or employee organization within three months of receipt, or

(iii) Both; and

(3) For which, in the case of an insured plan-

(i) Refunds, to which contributing participants are entitled, are returned to them within three months of receipt by the employer or employee organization, and

(ii) Contributing participants are informed upon entry into the plan of the provisions of the plan concerning the allocation of refunds.

It is your position that the Trust is an employee organization from whose general assets benefits are paid.

An examination of the Trust declaration dated September 1, 1980, reveals the following characteristics of the Trust which are relevant to a determination of whether or not the Trust qualifies for this limited exemption.

The Trust was established by the Employer, declaring itself trustee for and on behalf of its employees (Section 3.01(a)). The trustees are appointed by the Employer and may be removed only by the Employer (Section 6.01(a) and (c)). The named fiduciary is the Employer (Section 2.02(10)). The Employer reserved the right to terminate or modify the Trust at any time without the consent of the beneficiaries of the Trust or any other person (Section 6.02(a)). Finally, employees are neither parties to the Trust declaration nor participants in the affairs of the Trust (other than as beneficiaries).

We believe that resolution of the issue presented rests upon whether the Trust is an "employee organization." Reference is made to the definition of "employee organization" at section 3(4) of ERISA:

The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

Because it appears that the Employer established, maintains and controls the Trust in those respects relevant to our consideration of this matter, and that employees are neither parties to the Trust agreement nor participants in the affairs of the Trust, the Trust is not an "employees' beneficiary association," as that phrase is used in section 3(4) of ERISA.¹ For these reasons, and

¹ It should be noted that this conclusion is solely for the purposes of title I of ERISA and is not intended to affect the status of the Trust under section 501(c)(9) of the Code, relating to voluntary employees' beneficiary associations.

because the Trust does not exist for the purpose of enabling employees to "deal with employers concerning an employee benefit plan," we conclude that the Trust is not an employee organization within the meaning of section 3(4) of ERISA.

On the basis of the foregoing, we are unable to conclude that the Trust may avail itself of the limited exemption provided by regulation section 2520.104-20.

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

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs