

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-31A
Sec. 103(a)(3)(A), 103(a)(3)(c)

JUN 21 1983

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

Dear Mr. Cartano:

This is in response to your letter, on behalf of Audiotronics Corporation (the Company), concerning the application of the annual reporting requirements under the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence regarding ERISA has resulted in a delay in responding to you.

Specifically, you have requested an advisory opinion that the Audiotronics Profit Sharing Plan (the Plan) is no longer required to engage, pursuant to section 103(a)(3)(A) of ERISA, an independent qualified public accountant to make an examination and report with respect to the financial statements of the Plan. In support of your request, you have provided the following information.

The Plan has been maintained since 1966 and has more than one hundred participants. The trustee of the Plan is the First Interstate Bank (the Bank). The Bank does not act as administrator of the Plan or make determinations ordinarily made by the administrator rather than the trustee. The Bank does have discretion in investing assets of the Plan. Most of the assets are invested in units in a money market fund managed by the Bank. Other assets are invested in common stock of the Company as a result of a recent merger of the Company's Employee Stock Ownership Plan. The Bank may make any other investments allowed by law.

The Bank, according to your letter, prepares the financial statements for the Plan and certifies that they are correct. These certified financial statements of the Plan include a list of all assets and liabilities, all transactions in connection therewith, all charges to the accounts of employees, all charges for accounting, attorney and other professional fees, all income earned by the trust fund, all purchases and sales of assets, a current list of assets and certain other information.

On the assumption that the Bank continues to prepare the financial statements of the Plan and certifies that they are correct, you have requested an opinion from the Department that the Company may discontinue its audit of the financial statements of the Plan and indicate under item 22(b) of Form 5500 that an accountant's opinion is not required. In this regard, you refer to the exception from the audit requirements set forth in section 103(a)(3)(C) of ERISA.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that:

Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, . . . , an independent qualified public accountant, who shall conduct an examination of any financial statements of the plan, and of other books and records of the plan, as the

accountant may deem 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 in conformity with generally accepted accounting principles Such examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant.

Section 103(a)(3)(C) of ERISA provides that:

The opinion required by subparagraph (a) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

Under 29 C.F.R. §2520.103-8, which interprets and implements ERISA section 103(a)(3)(C), the examination and report of the independent qualified public accountant need not address any statement or information regarding plan assets held by a bank or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statement or information is transmitted and certified to by the plan administrator in accordance with 29 C.F.R. §2520.103-5.

While the scope of an accountant's examination and report may be limited under §2520.103-8, and ERISA section 103(a)(3)(C), it has long been and continues to be the position of the Department that if a plan is required under 29 C.F.R. §2520.103-1 to engage an accountant to render an opinion with respect to the financial statements of the plan an exemption is not provided under §2520.103-8 and 103(a)(3)(C) from such requirement solely because the plan's assets are held by a bank or insurance company and certification has been provided under §2520.103-5.

Accordingly, based on the information contained in your letter, it is the opinion of the Department that, while the examination and report of the Plan's accountant may be limited in accordance with ERISA section 103(a)(3)(C) and §2520.103-8, the administrator of the Audiotechnics Corporation Profit Sharing Plan is not exempt from the requirements of section 103(a)(3)(A) of ERISA to engage an independent qualified public accountant and to include the opinion of the accountant as part of the Plan's annual report.

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

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs