

U.S. Department of Labor

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



NOV 8 1985

85-38A

Mr. Russell E. Greenblatt
Katten, Muchin, Zavis, Pearl & Galler
525 West Monroe Street
Suite 1600
Chicago, Illinois 60606-3693

Dear Mr. Greenblatt:

This is in response to your request, on behalf of the Ben Sheftall Distributing Company, Inc. Recreation Trust (the Trust), for an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

As you were apprised, in reviewing your exemption application, a question was raised as to whether, and to what extent, the Trust constituted an "employee welfare benefit plan" within the meaning of ERISA section 3(1) subject to the fiduciary and other provisions of title I of ERISA. In this regard, section 3(1) of ERISA defines the term "employee welfare benefit plan" to mean:

... 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 such plan, fund, or program was established or is 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).

Pursuant to Article II, Section 2.1 of the Trust Agreement, accompanying your request, "[t]he Plan and Trust have been established to provide Participants with welfare benefits as set forth in the Plan and as may be amended from time to time, while they are Participants, and it is intended that the benefits provided by the Plan be 'life, sick, accident, or other benefits' as that phrase is defined in section 501(c)(9) of the Code." Article VIII, Section 8.1 further provides that "[i]t is intended that the Plan and Trust initially provide a recreation benefit, as specified in Section 8.9, but may in the future be utilized to provide other benefits permissible under section 501(c)(9) of the Code through formal adoption of such plans." Section 8.9 of Article VIII provides that:

Participants shall be entitled to the use of a recreation and vacation facility to be acquired or constructed within an hour drive of the Company's principal place of business. Said facility, which shall be owned by the Trustee and subject to control and disposition in accordance with the provisions of the Plan and Trust, shall provide Participants (directly or indirectly through convenient access to) with healthy activities of a nature tending to encourage relaxation and thus assist in combating fatigue by the Participants, thereby protecting against contingencies interrupting or impairing Participants' earning power. It is contemplated that said facility provide (directly or indirectly through convenient access to) recreational benefits such as lodging, tennis courts, swimming pool(s), billiard and ping-pong tables, beach areas, fishing facilities, etc.

It is the view of the Department of Labor that the "use of a recreation or vacation facility" does not constitute a "vacation" benefit within the meaning of ERISA section 3(1), nor any other benefit delineated in that section. We have concluded, based on the documents you have submitted viewed as a whole, that the only benefit to be provided by this Plan is the use of the recreation facility. Accordingly, to the extent that the only benefit provided by the Plan and Trust is the "use of a recreation or vacation facility," the Plan and Trust would not constitute an "employee welfare benefit plan" within the meaning of ERISA section 3(1) subject to the fiduciary and other provisions of title I of ERISA.

For the reasons set forth above, we are taking no further action concerning your request for an exemption.

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,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations