

**U.S. Department of Labor**

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



DEC 11 1986

86-28A  
Sec.

Ms. Maria B. Campbell  
Executive Vice President,  
Secretary & General Counsel  
AmSouth Bank N.A.  
P.O. Box 11007  
Birmingham, AL 35288

Re: AmSouth Bank N.A.  
Identification Number: F-3138A

Dear Ms. Campbell:

This is in response to your letter of May 17, 1985, concerning the application of the prohibited transaction provisions of section 4975 of the Internal Revenue Code of 1954 (the Code). Your letter concerns purchases and sales of stock of AmSouth Bancorporation (AmSouth) by self-directed individual retirement accounts (IRAs) for which AmSouth Bank N.A. (AmSouth Bank), a wholly-owned subsidiary of AmSouth, serves as custodian.

You represent that AmSouth is a bank holding company with total assets of over \$4 billion and approximately 10 million shares of common stock outstanding. AmSouth's common stock is listed on the New York Stock Exchange (NYSE) and its average daily trading volume for the first quarter of 1985 was approximately 11,000 shares.

On January 1, 1985, the existing IRA Plan for which AmSouth Bank serves as custodian was amended to include a "self-directed" feature, which permits its IRA customers to invest funds in common and preferred stocks, corporate bonds, treasury securities, covered call options and mutual funds on the basis of information obtained from the customers' own sources. Neither AmSouth nor AmSouth Bank will provide any form of investment advice or make investment recommendations. The self-directed IRA customer will have a brokerage account and a mutual fund account with AmSouth Bank through which purchases and sales of securities are made at the customer's direction. The customer will place investment orders with AmSouth's Brokerage Services which will select a third-party clearing house to execute and clear the customer's orders.

When a participant directs purchases or sales of AmSouth stock for his account, the stock would be purchased from or sold to a third party in a blind transaction on a securities exchange. The

price of the stock is reflective of the supply of and demand for shares of the stock on the transaction date. In the case of an actively traded issue such as AmSouth stock, it would be virtually impossible to trace the purchaser or seller of any specific shares changing hands on a securities exchange.

You request an opinion that purchases and sales of AmSouth stock on the NYSE by AmSouth Bank as custodian of its IRA accounts on behalf of and at the sole direction of the participants do not constitute prohibited transactions under section 4975(c)(1) of the Code. You also inquire whether it would make any difference if the participant is an "affiliated party" of AmSouth Bank, that is a one percent shareholder, executive officer or director.

Pursuant to section 2510.3-2(d) of the Department of Labor's (the Department) regulations the Department does not have jurisdiction under Title I of the Employee Retirement Security Act of 1974 (ERISA) over those individual retirement accounts described in section 408(a) of the Code which comply with the provisions of that section of the regulation.<sup>1</sup> Such IRAs are, however, subject to section 4975 of the Code. Under Presidential Reorganization No. 4 of 1978, effective December 31, 1978, the authority of the Secretary of the Treasury to issue interpretations regarding section 4975 of the Code has been transferred, with certain exceptions not here relevant, to the Secretary of Labor and the Secretary of the Treasury is bound by the interpretations of the Secretary of Labor pursuant to such authority. To the extent there is Title I jurisdiction regarding any IRA for which AmSouth Bank serves as custodian, references to specific sections of the Code in this letter shall also refer to the corresponding sections of ERISA.

Section 4975(c)(1) of the Code prohibits, in relevant part, the sale or exchange of property between a plan and a disqualified person (4975(c)(1)(A)), the furnishing of goods or services between a plan and a disqualified person (4975(c)(1)(C)), the use by or for the benefit of a disqualified person of the income or assets of a plan (4975(c)(1)(D)) and an act by a disqualified person who is a fiduciary whereby he or she deals with the income or assets of a plan in his or her own interest or for his or her own account (4975(c)(1)(E)).

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<sup>1</sup> Under the regulation, Title I is inapplicable only if: (1) no contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is to permit the sponsor to publicize the program and to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

Section 4975(e)(2) of the Code defines "disqualified person" to include a plan fiduciary and a person providing services to a plan.

With respect to purchases and sales of AmSouth stock by participants who are not "affiliated parties" in the open market in the manner described above, we note that the ERISA Conference Report states that:

In general, it is expected that a transaction will not be a prohibited transaction (under either the labor or tax provisions) if the transaction is an ordinary "blind" purchase or sale of securities through an exchange where neither buyer nor seller (nor the agent of either) knows the identity of the other party involved. [H.R. Rep. 93-1280, 93d Cong., 2d Sess., 307 (1974)].

Based on your facts and representations, it is the opinion of the Department that purchases and sales of AmSouth stock in blind transactions on the NYSE by AmSouth Bank on behalf of the unaffiliated participants of its self-directed IRA accounts do not constitute transactions described in section 4975(c)(1)(A) and (D) of the Code. Moreover, it appears that AmSouth Bank does not exercise the authority, control or responsibility to cause the IRA accounts for which it serves as custodian to engage in purchases and sales of AmSouth stock. Accordingly, it is our view that the purchase and sale of AmSouth stock by AmSouth Bank upon written direction of IRA participants unaffiliated with AmSouth Bank would not constitute a violation of section 4975(c)(1)(E) of the Code.<sup>2</sup>

With respect to your second request, the purchase in a blind transaction on the NYSE, or the holding of AmSouth stock by the self-directed IRA of an affiliated party would appear to raise questions under sections 4975(c)(1)(D) and 4975(c)(1)(E) of the Code, depending on the degree (if any) of the participant's interest in the transaction. Because of the inherently factual nature of this question, the Department will not issue an opinion with respect to whether the proposed transaction would violate sections 4975(c)(1)(D) and (E) of the Code.

We note that you have not requested and consequently the Department is not offering an opinion regarding the provision of brokerage services by AmSouth Bank to AmSouth Bank IRA plans through its brokerage service.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure describes the effect of advisory opinions.

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<sup>2</sup> We assume for purposes of this ruling that AmSouth as custodian has no authority or responsibility to vote or otherwise deal with the AmSouth stock held by its self-directed IRA accounts.

Sincerely,

Elliot I. Daniel  
Associate Director for Regulations and Interpretations