

U.S. Department of Labor

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



JUL 6 1989

89-10A
Sec. 3(1)

Mr. David A. Merline, Jr.
Merline & Thomas
Post Office Box 10796
665 North Academy Street
Greenville, South Carolina 29603

Dear Mr. Merline:

This is in reply to your letter of January 4, 1989, requesting an advisory opinion concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Professional Medical Products, Inc., (PMP) Educational Assistance Program (the Program). Specifically, you assert that the Program is an unfunded scholarship program within the meaning of 29 C.F.R. §2510.3-1(k) and, therefore, not an "employee welfare benefit plan" subject to the requirements of title I of ERISA.

Your correspondence and the accompanying statement of PMP personnel policy contain the following facts and representations. PMP has a policy of encouraging employees to continue their education by providing financial assistance. Only regular, full-time employees who have successfully completed PMP's 90-day orientation period are eligible for educational assistance. For eligible employees who successfully complete a course in a recognized and accredited school or institution with at least a "C" grade or equivalent, PMP pays all charges for tuition, textbooks, laboratory fees, and application fees. Costs of other tools, materials, or fees related to course work are not paid under the Program. Reimbursement checks to eligible employees who have met the Program requirements are issued through PMP's payroll check system and are payable from PMP's general assets. Employees who receive payments under the Program are responsible for paying appropriate income or other tax on all payments. No special fund, trust, or other arrangement to pay benefits under the Program has been established by PMP.

Section 3(1) of title I of ERISA defines the term "employee welfare benefit plan", in pertinent part, as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer ... 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, ... scholarship funds." Paragraph (k) of §2510.3-1 provides as follows in clarifying the extent to which scholarship programs are excluded from coverage by title I of ERISA:

For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a scholarship program, including a tuition and education expense refund program, under which payments are made solely from the general assets of an employer or employee organization.

On the basis of the information provided, it appears that the Program was established and is maintained by PMP for the exclusive purpose of providing direct payments or refunds for tuition and educational expenses of certain of its employees, and such payments and refunds are made solely from the general assets of PMP. Accordingly, it is the opinion of the Department of Labor that the Program is a "scholarship program" within the meaning of §2510.3-1(k) and, therefore, not an "employee welfare benefit plan" within the meaning of ERISA section 3(1). Accordingly, the Program is not subject to reporting and disclosure or other requirements applicable to employee benefit plans covered by title I of ERISA.

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,

Robert J. Doyle
Director of Regulations and Interpretations