P/OPINION 75-100

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June 6, 1975

Dear :

This is in response to your letter of April 1, 1975, directed to the attention of (Named person) of the (Staff) on behalf of the (Named Company) Hourly Employees' Pension Plan and Trust ("Hourly Plan"), the Salaried Employees' Pension Plan and Trust ("Salaried Plan") and the (Named) Company (company), presently a (State #1) corporation.

In your letter, you enclosed a memorandum which requested an opinion as to whether a proposed exchange of certificates representing [company] stock between [company], on the one hand, and the Hourly and Salaried Plans on the other, pursuant to a reincorporation of [company] under the (State #2) law, would be considered to be an acquisition of employer stock by the Plans under section 407(a)(2) of the Employee Retirement Security Act of 1974.

In your memorandum, you set forth the following facts and representations. The proposed reincorporation is designed to enable [company] to resist more effectively any attempt by corporate outsiders to obtain control of the company. The proposed reincorporation will be accomplished by merging [company] with a (State #2) corporation which is now a wholly owned subsidiary of [company] and which will be named (Named) Company after the merger. As is the case with the present corporation, stock of the new (Named Company) will be listed on the New York Stock Exchange. In the course of the reincorporation, the Hourly Plan and the Salaried Plan will exchange [company] stock certificates for stock certificates of [company's] (State #2) subsidiary on a one-for-one basis. As shareholders of the present [company], the Hourly and Salaried Plans will be affected by the reincorporation only by differences in the corporate law of (State #1) and (State #2) and by certain differences between the Certificates of Incorporation of [company] and its (State #2) subsidiary relating to election of

directors, cumulative voting, and the percentage of shareholder approval needed in the event of certain mergers or consolidations. To the extent that assets of [company] are used to purchase shares of dissenting shareholders, as required under (State#1) law, the percentage of outstanding shares owned by the plan may be altered, but the number of shares owned will remain essentially the same, as will the underlying assets of the reincorporated [company].

Based solely on the facts and representations set forth in your memorandum, and our consultation with the Solicitor of Labor we have concluded that the proposed exchange of securities would not be prohibited under section 407(a) of the Act.

This opinion deals only with the application of sections 406(a)(1)(B) and 407 of the Act to the proposed exchange of [company] stock described in your memorandum. No opinion is expressed as to the application of any other section of the Act to the proposed exchange; in particular, no opinion is expressed as to the application of sections 404 (relating to fiduciary duties) and 406(b) (relating to fiduciary self-dealing).

This opinion deals with sections 406(a)(1)(B) and 407 of the Act only as they apply in the specific facts and to the specific parties described in your memorandum. Accordingly, the views of the Department of Labor contained herein should not be deemed to serve as a precedent for the application of these sections to transactions other that the transaction described in your memorandum, whether or not involving the same parties.

Sincerely,