February 5, 1975

Dear   :

This is in response to your letter requesting an exemption
from the definition of "employee" for fulltime students
under the provisions of the Employee Retirement Income
Security Act of 1974 (P.L. 93-406, 88 Stat. 829, 29 U.S.C.
1001 et seq.). In support of this request, your letter
states that student employees of educational institutions
have not yet embarked on their employment careers and
should not, therefore, be considered as eligible employees
for pension purposes.

Although we recognize your concern, the pertinent provisions
of the Act are quite specific and there is no provision
authorizing the Secretary of Labor to grant permanent
exemptions from these provisions. An employee is broadly
defined by the Act as ". . .any individual employed by an
employer." Employees who complete 1,000 hours of service
within the applicable 12-month computation period are to be
credited with a year of service for eligibility to participate
in an employee pension benefit plan and for attaining a
nonforfeitable (vested right) to accrued benefits derived
from employer contributions. In addition, those employees
who are participants in a pension plan are to be credited
with at least a ratable portion of the yearly accruable
benefits upon the completion of 1,000 hours of service
during a 12-month period.

Plans may, however, adopt certain provisions to ensure
that pension benefits will only inure to employees
with substantial periods of service. Generally, plans
are permitted to require the attainment of age 25 and
one year of service to participate in the plan but may,
where immediate vesting is not provided, require attainment
of age 25 and three years of service or, in the case of

P/OPINION 75-18

plans benefiting employees of educational institutions
(especially pertinent here), attainment of age 30 and
one year of service. Moreover, plans may choose any one
of three alternative vesting schedules provided by the Act,
including a formula that provides no vesting until completion
of 10 years of service.

I hope this information is useful to you.

Sincerely,