

February 18, 1975

Dear :

This is in response to your letter concerning the rights of under the Employee Retirement Income Security Act of 1974 (ERISA). The specific problem relates to Article 5.7 of the Inc., pension plan, forwarded by your office, which states that a retired participant who engages in employment or business activity considered competitive with or "otherwise prejudicial" to the [Company] may suffer suspension of retirement income payments.

One of the protections afforded by the ERISA is the prescription of minimum standards for determining the nonforfeitability of an employee's accrued pension benefits (vesting) by employee pension benefit plans. Once an employee has achieved a nonforfeitable right to accrued pension benefits, payment of these benefits may be forfeited or suspended in only a few enumerated circumstances. Payment of pension benefits may be suspended during the time that the retired participant is employed by the same employer for whom the participant worked before retirement. No provision is made for suspension of vested benefits because of employment or business activity considered competitive or prejudicial to the employer.

The Inc., plan apparently is a single employer employee pension benefit plan that was in existence on January 1, 1974. The plan will have to be amended in conformity with the vesting standards just discussed by the first day of the plan year beginning in 1976 to comply with the Act. After such time, suspension of payment of a retired participant's benefits for engaging in employment or business activity considered competitive with or "otherwise prejudicial" to [Company] will be illegal. However, the plan will be permitted to suspend payment of a retired participant's pension benefits during the time that he or she is re-employed by Inc.

If you have further questions, please do not hesitate to write.

Sincerely,