P/OPINION 75-95

404(a)(1)✓
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December 17, 1975

Dear :

This is in reply to your letter dated October 7, 1975, to the Secretary of Labor, inquiring about continuation of the practice under which part of the money deducted from employees' compensation and forwarded to various vacation and holiday funds may be reforwarded to the union to pay working dues. You explained that this procedure has been established to save the various employers from having to make multiple deductions, and emphasized that is is done only upon express authorization of the employee involved. You further explained in a conversation with of my staff that pending our decision about the legality of this practice under the Employee Retirement Income Security Act of 1974 ("ERISA"), no dues money is being forwarded to the unions, and that as a consequence that various building trades unions with which your association deals are facing financial difficulties.

This response is addressed to the two possible legal obstacles under ERISA which you believe the proposed deduction arrangement might raise. We do not think either one is necessarily an impediment, provided all the conditions discussed below are satisfied.

The first possible legal obstacle is the exclusive purpose rule in section 404(a)(1) of the Act. Your question was whether all money paid to the vacation and holiday plans must be used exclusively for the benefit of participants and beneficiaries, or whether some of it may be forwarded to an employee organization as working dues. We think the answer depends upon the purpose for which the money is paid to the plan. If it is clearly stated in the documents that a portion of the money is not intended to become a plan asset, but is sent to the plan for transmission to the union, we think that portion does not become a plan asset and therefore is not covered by the exclusive purpose rule.

The second possible obstacle is the prohibition under section 406(a)(1)(C) against transactions involving the furnishing of services between the plan and a party in interest. The plan by collecting dues on behalf of the union and by transmitting such dues to the union, is providing a service to the union, which falls within the scope of section 406(a)(1)(C). On June 2, 1975 a proposed class exemption was published permitting such transactions between multiemployer plans and parties in interest under certain conditions. This exemption provides that administrative services may be furnished by a plan to a participating employee organization provided the terms of the arrangements are at least as favorable to the plan as an arm's length transaction, and certain other conditions specified in the proposed class exemption are met. We call your attention to the material beginning near the bottom of the third column on page 23800 of the enclosed excerpt from the Federal Register. The Department of Labor and the Internal Revenue Service have under consideration the comments received on the proposed class exemption and expect to publish the permanent class exemption covering the provision of administrative services in the near future.

Although the fact situation you present could raise issues under section 302(c) of the Labor-Management Relations Act of 1947, as amended, we have offered no opinion on that issue and have specifically addressed our response to the provisions of ERISA discussed above.

Sincerely,