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May 4, 1976

Dear :

Your letter of October 30, 1974, addressed to the Internal Revenue Service, has been referred to this office for reply.

Your letter states that a qualified profit sharing plan handled by the Trust Company of purchased a group insurance contract through a person who is a licensed agent and who is also the office manager and an employee of the sponsoring employer and a participant in the subject plan. You inquire whether this person is a party in interest, within the meaning of section 3(14) of the Employee Retirement Income Security Act of 1974 (the Act), and, therefore, prohibited under section 406 of the Act from receiving commissions on the sale of the insurance to the plan.

Section 3(14) of the Act defines the term "party in interest" to include, in relevant part, an employee or an employer any of whose employees are covered by the plan. Accordingly, by virtue of being an employee of the sponsoring employer, the person described in your letter is a party in interest with respect to the plan and may, therefore, be prohibited under section 406(a) of the Act from receiving commissions on the sale of insurance to the plan.

In this regard, I am enclosing for your information, a copy of ERISA IB 75-1 (December 31, 1974), which as here pertinent, interprets section 414(c)(4) of the Act as providing a transitional exemption (if certain conditions are met) until June 30, 1977, from the prohibitions of section 406 of the Act to permit a plan consultant (who may be a fiduciary and a party in interest) to cause the sale of insurance to the plan and to receive commissions for such sales from the insurance company writing the policy.

You might note that the definition of "party in interest" in section 3(14) of the Act is similar to the definition of "disqualified person" contained in section 4975(e) (2) of the Internal Revenue Code of 1954, as amended. However, under the Code definition, an employee of an employer any of whose employees are covered by the plan is not a "disqualified person" solely by virtue of such employer-employee relationship.

Sincerely,