P/OPINION 77-31

406

March 21, 1977

Dear :

This is in response to your submission dated July 11, 1975, in which you requested clarification as to whether the purchase of application and information cards on a shared basis by three welfare plans and (named) Union Local # (the Union) constitutes a transaction prohibited under section 406 of the Employee Retirement Income Security Act of 1974 (the Act) where the Union is a party in interest, within the meaning of section 3(14) of the Act, with respect to such plans. The three plans are the Health and Welfare Fund, the Health and Welfare Fund A, and the Health and Welfare Non-Food Fund (the Plans).

In your submission you stated that the cards are a composite form including application for membership in the Union and authorization of the Union as bargaining agent, as well as employee information needed and used by the Plans; that the new cards would cost the Plans approximately one cent less per card over the previous practice of using separate forms for the Union and the Plans; and that the use of joint cards will result in savings of cost and time to the Plan in computerizing the information on the cards. According to the submission, one-half of the cost of the cards will be borne by the Union, while the other half will be borne by the Plans on a prorated basis.

On the basis of the representations set forth in your submission, we have concluded that the joint purchasing of the application and information cards by the Plans and the Union, where one-half of the cost of the cards is borne by the Union and the other half is borne by the Plans on a prorated basis bearing a reasonable relationship to each party's use, does not constitute a prohibited transaction under section 406(a) of the Act.

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No opinion is expressed herein as to whether the joint purchasing of the application and information cards by the Plans and the Union on the above basis complies with any provisions of Title I of the Act except section 406(a) or with the provisions of any other law.

In your July 11, 1975 submission, you requested that in the event that it should be concluded that the joint purchasing of the application cards by the Plans and the Union, where the cost of the cards is allocated one-half to the Union and one-half to the Plans on a pro-rated basis, constitutes a prohibited transaction under section 406 of the Act, an exemption under section 408(a) of the Act be granted for such joint purchasing. In view of our conclusion that such joint purchasing does not constitute a prohibited transaction under section 406(a), however, and the lack of any information in your letter relating to any perceived prohibited transaction under section 406(b), your application will be treated as closed and no further action will be taken in connection with that application.

Sincerely,

ERISA OPINION

77-3.

21 MAR 1977

Harold S. Simonoff, Esq.
Tomer, Parks, Seliger, Simonoff
& Adourian
400 Market Street
Camden, New Jersey 08102

Re: Exemption Application No. L-238

Dear Mr. Simonoff:

This is in response to your submission dated July 11, 1975, in which you requested clarification as to whether the purchase of application and information cards on a shared basis by three welfare plans and Retail Store Employees Union Local 1262 (the Union) constitutes a transaction prohibited under section 406 of the Employee Retirement Income Security Act of 1974 (the Act) where the Union is a party in interest, within the meaning of section 3(14) of the Act, with respect to such plans. The three plans are the Retail Store Employees Union Local 1262 and Subscribing Employers Health and Welfare Fund, the Retail Store Employees Union Local 1262 and Subscribing Supermarket Employers Health and Welfare Fund A, and the Retail Store Employees Union Local 1262 and Subscribing Employers Health and Welfare Non-Food Fund (the Plans).

In your submission you stated that the cards are a composite form including application for membership in the Union and authorization of the Union as bargaining agent, as well as employee information needed and used by the Plans; that the new cards would cost the Plans approximately one cent less per card over the previous practice of suing separate forms for the Union and the Plans; and that the use of joint cards will result in savings of cost and time to the Plan in computerizing the information on the cards. According to the submission, one-half of the cost of the cards will be borne by the Union, while the other half will be borne by the Plans on a prorated basis.

On the basis of the representations set forth in your submission, we have concluded that the joint purchasing of the application and information cards by the Plans and the Union, where one-half of the cost of the cards is borne by the Union and the other half is borne by the Plans on a prorated basis bearing a reasonable relationship to each party's use does not constitute a prohibited transaction under section 406(a) of the Act.

No opinion is expressed herein as to whether the joint purchasing of the application and information cards by the Plans and the Union on the above basis complies with any provisions of Title I of the Act except section 406(a) or with the provisions of any other law.

In your July 11, 1975 submission, you requested that in the event that it should be concluded that the joint purchasing of the application cards by the Plans and the Union, where the cost of the cards is allocated one-half to the Union and one-half to the Plans on a pro-rated basis, constitutes a prohibited transaction under section 406 of the Act, an exemption under section 406(a) of the Act be granted for such joint purchasing. In a letter to you from Mr. Ellis Scott of this office, dated August 6, 1975, your application for an exemption was assigned the number L-238. In view of our conclusion that such joint purchasing does not constitute *a* prohibited transaction under section 406(a), however, and the lack of any information in your letter relating to any perceived prohibited transaction under section 406(b), application No. L-238 will be treated as closed and no further action will be taken in connection with that application.

Sincerely,

Fred W. Stuckwisch
Direction
Office of Regulatory Standards
and Exceptions