

November 10, 1977

Dear :

This is in reply to your letter of November 24, 1976, concerning whether the (named) Company Employee Stock Ownership Plan and Trust is covered under the Employee Retirement Income Security Act of 1974 (ERISA).

Section 3(2) of ERISA defines an "employee pension benefit plan" as "any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program -- (A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan."

The purpose of the plan, according to the documents, is ". . . to provide for their security in retirement and for the security of them and their families in the case of death or disability" The definition of the plan in Article I, Section 1.01, is stated as ". . . the employee stock ownership retirement plan and related trust" Article IV, section 4.01, defines normal retirement age as 65 and states, "A Participant who remains in the employ of the Employer after attaining Normal Retirement Age shall no longer participate in contributions of the Employer under the Plan." Article IV, section 4.03, states, "Upon termination of a Participant's employment prior to attaining Normal Retirement Age . . . , the Advisory Committee, in its sole discretion, may direct the Trustee to pay the Participant his nonforfeitable Accrued Benefit" Section 4.03 also states, "If the Advisory Committee does not give the Trustee a direction to distribute, the Trustee shall

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continue to hold the Participant's Accrued Benefit in trust until the close of the Plan Year in which the Participant attains Normal Retirement Age, at which time the Trustee shall commence distribution of the Participant's nonforfeitable Accrued Benefit in accord with the provisions of ARTICLE V of this Agreement." It is clear from these sections that the plan, by its express terms, provides retirement income to employees. This is not affected by the fact that under Article V, section 5.03, an employee may elect to withdraw that portion of the accrued benefit in his or her account which is attributable to employer contributions made at least 85 months prior to the date of election.

Based on the foregoing, the (named) Company Employee Stock Ownership Plan and Trust is an "employee pension benefit plan" within the meaning of section 3(2) of ERISA and is therefore subject to the requirements of ERISA.

Sincerely,