

JAN 23 1979

Mr. Albert S. Rose, Jr.
Shifrin, Treiman, Bamburg & Dempsey
St. Louis County National Bank Building
11 South Meramec Avenue
St. Louis, Missouri 63105

Dear Mr. Rose:

This is in reply to your letters concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to cash payments and free routine medical care provided to needy ex-employees of Stix, Baer and Fuller (Stix) by the Leader Foundation (the Foundation). Specifically, you question 1) whether the Foundation is an employee pension benefit plan or an employee welfare benefit plan, or both, within the meaning of ERISA title I; and 2) if the Foundation is an employee benefit plan, to what extent is it subject to the reporting, disclosure, participation, vesting, funding and fiduciary responsibility provisions of ERISA. We regret the delay in responding to your inquiry.

You represent that the Foundation is a non-profit corporation established by Stix in 1944 for charitable relief of needy Stix employees and ex-employees and their dependents. Stix and others may contribute money or property to the Foundation to be used for charitable purposes as outlined in Article Fourth of the Foundation's Articles of Association. To date Stix has been the only contributor to the Foundation. It has made contributions totaling \$840,000, the last of which was made in the fiscal year ending January, 1948. While the Foundation must fulfill its charitable purpose as provided in Article Fourth by furnishing benefits listed therein (including but not limited to cash payments to retired employees and sick benefits) to employees or ex-employees of Stix or their dependents, there is also a provision in Article Fourth for use of Foundation funds for the relief of the needy of the city of St. Louis, Missouri, in the event that there is no further substantial need among the original intended beneficiaries. The Articles of Association prohibit any amendment which shall change the charitable purposes for which property belonging to the Foundation may be used. The Internal Revenue Service has determined that the Foundation is exempt from federal income tax in accordance with section 501(c)(3) of the Internal Revenue Code, and benefits are paid or made available to needy employees or ex-employees solely at the discretion of the Foundation's Board of Directors and without any continuing legal obligation to provide such benefits to any individual beneficiary or group of beneficiaries on the part of the Foundation.

You also represent that Stix was liquidated in 1963 after Associated Dry Goods Corporation acquired its assets. Associated Dry Goods has not contributed to the Foundation, and no employee or ex-employee of Associated Dry Goods Corporation nor dependent of such receives charitable benefits from the Foundation. At present the Foundation makes disbursements on a regular basis to 56 ex-employees of Stix who have been found to merit such payments based on their continuing dire financial circumstances.

Section 4(a) of ERISA provides in relevant part that ERISA title I applies to "any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce" Section 3(3) of ERISA defines the term "employee benefit plan" as any employee welfare benefit plan or any employee pension benefit plan or any plan which is both. Sections 3(1) and 3(2) which define the terms "employee welfare benefit plan" and "employee pension benefit plan" include within those definitions plans, funds, or programs established or maintained by an employer to the extent that the plan, fund, or program is established or maintained for the purpose of providing benefits described in sections 3(1) and 3(2). Based on your representations, the Department has determined that the Foundation is neither an employee welfare benefit plan nor an employee pension benefit plan as described in ERISA sections 3(1) and 3(2). For the above reason, the Foundation is not an employee benefit plan within the meaning of ERISA title I and therefore not subject to its provisions.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs