

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216



MAY 22 1979

OPINION 79-33 A

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Mr. George C. Niebank, Jr.
Vice President - Law
Santa Fe Industries, Inc.
224 S. Michigan Avenue
Chicago, Illinois 60604

Dear Mr. Niebank:

This is in response to your letters requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Santa Fe Industries Employee Stock Ownership Plan (the Plan) is an employee benefit plan within the meaning of title I of ERISA.

You advise that the Plan is intended to meet section 301(d) of the Tax Reduction Act of 1975 as amended by the Tax Reform Act of 1976. You intend to seek qualification of the Plan under section 401 of the Internal Revenue Code. The Plan is for salaried employees of Santa Fe Industries, Inc., and any affiliated company.

Section 3(3) of ERISA defines the term "employee benefit plan" to include employee pension benefit plans as well as employee welfare benefit plans. Section 3(2) of ERISA defines employee pension benefit plans to include:

. . . 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.

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On the basis of the Plan's documents which you submitted, it appears that the Plan does not permit withdrawals until the earlier of 8 years after the contribution is made or termination. Therefore, the Plan results in deferrals of income for periods extending to termination of covered employment. Consequently, it appears that the Santa Fe Industries Employee Stock Ownership Plan is an employee pension benefit plan within the meaning of section 3(2).

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