



OPINION 80-39A

206(d) 514
402(b)(4)
403(c)(1)
404(a)(1)(A)
406(b)(2)

JUN 27, 1980

Mr. George A. Grenfell, Jr.
Assistant District Attorney
P.O. Box 12946
Fresno, California 93779

Dear Mr. Grenfell:

This is in response to your letters of December 11, 1979, and January 18, 1980. In your letters, you ask whether, under the Employee Retirement Income Security Act of 1974 (ERISA), it is permissible to garnish the Laborers' Vacation-Holiday Trust Fund for Northern California (the Fund) for child support arrearages.

You advise that the Family Support Division of the Fresno County District Attorney has attempted to garnish the Fund for child support arrearages of one of the participants in the Fund. The trustees of the Fund have refused to comply, apparently on the basis that compliance would be inconsistent with certain provisions of ERISA as those provisions are interpreted in Interpretive Bulletin 78-1 (29 CFR §2509.78-1, issued December 15, 1978).

The trust agreement for the Fund dated June 4, 1963 (as revised, 1975) provides in Article II, Section 7:

Section 7. Each Employee or beneficiary under the Plan is hereby restrained from selling, transferring, anticipating, assigning, alienating, hypothecating or otherwise disposing of his vacation account or any other right or interest under the Plan, and the Board of Trustees shall not recognize, or be required to recognize any such sale, transfer, anticipation, assignment, alienation, hypothecation or other disposition. Any such vacation account, right or interest shall not be subject in any manner to voluntary transfer or transfer by operation of law or otherwise, and shall be exempt from the claims of creditors or other claimants and from all orders, decrees, garnishments, executions or other legal or equitable process or proceeding to the fullest extent permissible by law; provided, however, that the Board of Trustees shall have authority to continue, maintain and from time to time modify or revoke, in whole or in part, a policy and procedure for the recognition and payment, from the vacation account affected thereby, of any order, decree, warrant, garnishment, execution or other legal or equitable process for the enforcement of any liability to any governmental agency, or in connection with any domestic relations or child support proceeding, to such extent as the Board in the exercise of its sole discretion determines is for the best interests of all participants and beneficiaries of the Plan.

(Amended October 21, 1975 and December 31, 1975)

Interpretive Bulletin 78-1 discusses the circumstances under which it is permissible for a vacation plan to make a payment of all or any portion of benefits to which a plan participant or beneficiary is entitled to a party other than

the participant or beneficiary. The Bulletin indicates that such a payment is permissible under certain sections of ERISA, including sections 402(b)(4), 403(c)(1), 404(a)(1)(A), 404(a)(1)(D), and 406(b)(2), if the arrangement pursuant to which the payment is made does not constitute a prohibited transaction under ERISA and:

- (1) The plan documents expressly state that benefits payable under the plan to a participant or beneficiary may, at the direction of the participant or beneficiary, be paid to a third party rather than to the participant or beneficiary;
- (2) The participant or beneficiary directs in writing that the plan trustee(s) shall pay a named third party all or a specified portion of the sum of money which would otherwise be paid under the plan to him or her; and
- (3) A payment is made to a third party only when or after the money would otherwise be payable to the plan participant or beneficiary.

As the Department understands your letters, the trustees of the Fund argue that the above-cited provisions of ERISA, as interpreted in I.B. 78-1, would prevent the payment of benefits to a party other than a participant or beneficiary where the conditions of I.B. 78-1 were not met.

The Department undertook, in I.B. 78-1, to describe the circumstances under which vacation plan payments might be made to a person other than a plan participant or beneficiary, at the direction or request of the participant or beneficiary. I.B. 78-1 was not intended to apply to payments that the participant or beneficiary does not voluntarily assign, such as those which might be effected pursuant to a judicial garnishment.

The Department's view with respect to the permissibility of garnishment of pension plan benefits has been expressed in its submission in Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978), aff'd _____ F.2d ____ (2d Cir. 1979). That case involved the enforcement of a state court family support order against a pension plan. Section 206(d) of ERISA requires that pension plans covered under part 2 of ERISA provide that a participant's pension benefits may not be assigned or alienated, and the pension plan in Cartledge so provided. The committee that administered the plan argued that section 206(d) of ERISA and the provisions of the plan precluded the enforcement of the support order.¹ The Department of Labor, in an amicus curiae brief filed jointly with the Department of Justice and the Secretary of the Treasury, took a contrary view. The Department expressed its view that Congress did not intend the anti-alienation provisions of ERISA to prevent the enforcement of family support decrees requiring payment of benefits in pay status, and that there was accordingly an implied exception to the anti-alienation provisions of ERISA in the case of such decrees.²

As is the case with pension plans, the Department is of the opinion that ERISA would not prevent the garnishment of child support arrearages in the circumstances you have described.

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

Sincerely,

Ian D. Lanoff
 Administrator
 Pension and Welfare Benefit Programs

¹ The plan also relied on section 1021(c) of ERISA, which amends the Internal Revenue Code to require that an anti-alienation provision be included in qualified pension plans under section 401 of the Code.

² See also Stone v. Stone, No. 78-2313 (9th Cir.) (app. pending) where the Department filed an amicus curiae brief taking a similar position in a case involving the enforcement of a community property decree against a pension plan.