

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-11A  
401(b)

JAN 16 1981

Mr. Michael F. Klein, Jr.  
Price Waterhouse & Co.  
153 East 53rd Street  
New York, New York 10022

Identification Number: F-1675A

Dear Mr. Klein:

This letter responds to your September 16, 1980, letter requesting an advisory opinion under the Employee Retirement Income Security Act of 1974 (ERISA).

You represent that Tandy Corporation (Corporation) proposes to establish a death benefit plan for its employees. The benefits under the plan would be paid by the Corporation from its general assets. To cover all or part of its potential liabilities under the plan, the Corporation is considering the purchase of life insurance policies on the lives of plan participants. The insurance proceeds would be payable only to the Corporation, which would be named as beneficiary. The Corporation would have all rights of ownership under the policies, which would be subject to the claims of the Corporation's creditors. Neither the plan nor any participant or beneficiary would have any preferred claim against the policies or any beneficial ownership interest in the policies. There would be no representation to any participant or beneficiary that the policies will be used only to provide plan benefits or that they in any way represent security for the payment of benefits, and the plan benefits would not be limited or governed in any way by the amount of insurance proceeds received by the Corporation. The plan would neither require nor allow employee contributions.

You request an advisory opinion that the insurance policies described above would not be assets of the proposed plan.

As you know, the Department of Labor has under consideration proposed regulation 29 CFR 2550.401b-1 (44 FR 50363, August 28, 1979; modified 45 FR 38084, June 6, 1980) which would clarify the meaning of "plan assets" for purposes of title I of ERISA. Pending the adoption of a regulation, the Department has discretion to issue an advisory opinion under certain circumstances, such as when an issue is presented on which the answer seems to be clear. See

section 5.03 of ERISA Procedure 76-1. Accordingly, we conclude that, if the Corporation adopts the proposed death benefit plan and purchases and uses insurance policies as you have represented, the policies would not be assets of the plan. We wish to note that this conclusion is consistent with the provisions of the proposed regulation.

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

Sincerely,

Alan D. Lebowitz  
Assistant Administrator for Fiduciary Standards  
Pension and Welfare Benefit Programs