

Pension Benefit Guaranty Corporation

76-25

February 14, 1976

REFERENCE:

[\*1] 4021(a) Plans Covered. Requirements of Coverage

OPINION:

This is in response to your request of January 16, 1976, for a reconsideration of our decision regarding the notice of plan termination submitted on June 20, 1975, by

You indicate that the "Employee Retirement Plan II of \* \* \* was "continued" by \* \* \* after April, 1974 and that such continuance, apparently, occurred due to the fact that \* \* \* neither rejected the \* \* \* plan nor adopted a different plan. You also state that the actions of \* \* \* subsequent to \* \* \* April, 1974, indicate a continuance of the \* \* \* Plan. Our understanding of the facts differs.

First, we find no provision of the \* \* \* plan referring to a concept of successorship whereby a participating entity within the meaning of "Company" \* \* \* automatically "continues" the plan, absent a formal rejection, upon ceasing to be a subsidiary of \* \* \* In fact, Section 16.2 of the \* \* \* plan indicates that a plan termination occurs. "unless a successor retirement plan is adopted as a continuation of this plan." Also, the Stock Purchase Agreement of April 12, 1974 between \* \* \* and \* \* \* states on page 36 that \* \* \* will be "caused" to "adopt" either the \* \* \* plan or [\*2] a comparable plan.

Second, the information provided to this Corporation indicates that a separate plan from the \* \* \* plan allegedly was adopted by \* \* \* (See Trust Agreement of July, 1974). However, neither has evidence of such adoption nor its subject plan document been presented to this Corporation. Indeed, the notice of termination submitted on June 20, 1975 and the "Application of \* \* \* for Appointment of a Trustee" (which was filed with the U.S. District Court for the Western District of Tennessee, Western Division, on \* \* \* indicates that no "official" adoption occurred. Rather, the above "Application" alleges that after such date \* \* \* "operated" pursuant to and "treated" the \* \* \* plan as the plan of \* \* \* Moreover, there exists, according to the notice of termination, no employer identification number for the trust; our investigation has revealed that after April, 1974, the Company made only preliminary efforts to adopt a plan and no documentation was drafted; we have a copy of a letter dated May 8, 1975 from \* \* \*, \* \* \* the trustee, to \* \* \* indicating a failure to adopt a plan or appoint a retirement committee and the fund's depletion due to "previously authorized" [\*3] pension payments; and we have no information that contributions were made for any period of time after April, 1974.

Due to the fact that the threshold requirement of a written plan document was not satisfied in this case, the effect of the ceasing of contributions on the plan's coverage has not been considered.

Accordingly, our previous position is reaffirmed.

Steven E. Schanes  
Executive Director