

Pension Benefit Guaranty Corporation

78-21

September 19, 1978

REFERENCE:

[*1] 4021(b)(13) Plans Covered. Professional Service Employer Plans

OPINION:

This is in response to your inquiry whether the above plan ("Plan") is excluded from Title IV coverage under the Act § 4021(b)(13) exclusion of plans maintained by professional service employers. For the reasons stated herein, this Office concludes that the Plan is not excluded from Title IV coverage by Act § 4021(b)(13).

As we understand the pertinent facts, the stock of the * * *, which established and maintained the Plan, is owned by four persons, each of whom is licensed in Indiana as an embalmer and funeral director. On * * * September 2, 1974, there were nine participants in the Plan, and, to the present, that number has not been exceeded. Indiana law requires, to obtain an embalmer's and funeral director's license, four years of high school, one year of college training, a year of formal training in embalming and funeral directing, and one year on the job training.

Title IV excludes from coverage any plan * * *

established and maintained by a professional service employer which does not at any time after the date of enactment of this Act have more than 25 active participants in the plan. Act § 4021(b)(13) [*2] (emphasis added).

A "professional service employer" is an entity * * *

(i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is performance of professional services . . . * * * Act § 4021(c)(2)(A) (emphasis added).

A nonexclusive list of "professional individuals" is provided by Act § 4021(c)(2)(B); "funeral directors" and "embalmers" are not among the enumerated professionals. Consequently, the determination whether such individuals, and others not listed in Act § 4021(c)(2)(B), are "professional individuals" depends on an analysis of the services performed and the expertise required to perform them.

As stated in PBGC Opinion Manual letter 76-106, a professional individual generally is one who provides services which require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship or from training in the performance of routine mental, manual or physical processes. The rendering of professional services [*3] generally requires the consistent exercise of discretion and judgment in its performance and would be predominantly intellectual in character. See Labor Management Relations Act, 1947, 29 U.S.C. § 152(12) (1976).

An embalmer-funeral director would not appear to fit within the above description. Because embalmers, funeral directors, undertakers and the like, are not "professional individuals" within Act § 4021(c)(2)(B), an undertaking or funeral establishment cannot be a "professional service employer" within Act § 4021(c)(2)(A). Therefore, the plans established and maintained at such businesses are not excluded from Title IV coverage by Act § 4021(b)(13).

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General Counsel