

OPINION NO. 83-35A

27

Sec. 3(1)

JUN 27 1983

Mr. Jeffrey G. Whitman  
William M. Mercer, Incorporated  
P.O. Box 76851  
Los Angeles, California 90076-0851

Dear Mr. Whitman:

This is in reply to your letters requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Weiser Lock Division of Norris Industries Employee Assistance Program (the Assistance Program) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that the Assistance Program was established on January 1, 1981, with the intent of increasing employee productivity by encouraging the employees to seek assistance for certain described personal problems. Under the Assistance Program, the employer has contracted for, and bears the cost of, an individual (the Counselor) with a degree in psychology to be at the company each Wednesday for approximately 6 hours. Employees may request an appointment for a confidential session with the Counselor and managers may also suggest to an employee that he or she seek such a session. During the session, the Counselor's function is to provide confidential and professional assistance to the employee and eligible family members. Once the Counselor identifies the problem, a plan of action is suggested. If the employee agrees with the plan of action, a referral is made to an appropriate professional person, agency, or service clinic. The Counselor then serves as a coordinator with the outside service. The costs of the plan of action are not covered under the Assistance Program although they may be among benefits offered by other programs maintained by the employer. In the booklet given to employees regarding the Assistance Program, personal problems mentioned include alcoholism, drug abuse, and "people problems."

Section 3(1) of ERISA defines the term "employee welfare benefit plan" 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 such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability,

death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

In Department of Labor regulation 29 C.F.R. §2510.3-1, the Department of Labor (the Department) described certain practices which it would not deem to be employee welfare benefit plans. Specifically, in regulation section 2510.3-1(c)(2), to which you refer, the Department stated:

(c) On-premises facilities. For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include --

(2) The maintenance on the premises of an employer of facilities for the treatment of minor injuries or illness or rendering first aid in case of accidents.

The booklet describing the Assistance Program indicates that health problems and health-related personal problems are among those which are dealt with through the Assistance Program. In addition, the Assistance Program apparently provides assistance in connection with problems involving the mental health of employees and their dependents. Under these circumstances, we believe that the Assistance Program provides "benefits in the event of sickness," which are among the benefits listed in section 3(1) of ERISA. Further, the benefits provided under the Assistance Program extend to members of an employee's family and to problems that are more serious than "minor injuries." Accordingly, we do not think that the Assistance Program can be considered a facility described in regulation section 2510.3-1(c)(2).

Therefore, based upon your representations and the information provided in your letters, it is the Department's position that the Weiser Lock Division of Norris Industries Employee Assistance Program is an employee welfare benefit plan within the meaning of section 3(1) of ERISA and subject to the provisions of title I of ERISA.

If you have any questions concerning the requirements that would be applicable to the Assistance Program under title I of ERISA, please contact John Keene, Division of Coverage, Office of Reporting and Plan Standards, at (202) 523-8521.

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,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs