

Pension Benefit Guaranty Corporation

76-1

January 5, 1976

REFERENCE:

[*1] 4048 Date of Termination

OPINION:

This is in response to your letter of December 3, 1975, requesting an opinion as to whether the * * * Retirement Pension Plan (hereinafter the "Plan") terminated prior to the effective date of Title IV of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act").

Your letter stated that for Plan years 1970 and 1971 contributions as required under the Plan were made by the employer to purchase life insurance policies and to the auxiliary fund. Thereafter, the employer has paid the annual life insurance premiums directly to the insurance company instead of through the trustees of the Plan and has not made contributions to the auxiliary fund. Your letter further cited Section 15.3 of the Plan, which provides: "Plan shall terminate in the event Company does not make contributions sufficient to permit continuance of Plan in accordance with Section 13"

After a careful review of your letter and the Plan documents you subsequently sent, it is our opinion that the Plan did not terminate for purposes of Title IV of the Act prior to September 2, 1974, the effective date of the Act.

Section 15.3 of the Plan does not apply to terminate the [*2] plan prior to the effective date of the Act as a result of the failure of the employer to make contributions to the auxiliary fund. This contingency is specifically covered in Section 13.3 of the Plan, so that clearly the Plan continued in accordance with Section 13.

Moreover, it is our view that it was intended that the Plan continue to date. We find no evidence of any formal action undertaken to terminate the Plan nor any communication to participants of the Plan expressing an intent to terminate the Plan. To the contrary, the employer has continued the requisite life insurance premium payments and apparently participants have continued to accrue retirement benefits provided in Section 5 of the Plan to date.

Please advise us if you should have any further questions.

Henry Rose
General Counsel