



AO 90-46A

DEC 4 1990

Ms. Ellen O. Pfaff
Lane Powell Moss & Miller
3800 Rainier Bank Tower
Seattle, Washington 98101-2647

Dear Ms. Pfaff:

This responds to your request for an advisory opinion, on behalf of the trustee of the Bruce A. Nordstrom Self-Employed Retirement Plan (Plan), concerning the application of sections 514 and 206(d) of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to the court order described below.¹ Your submission contains the following facts and representations.

The Plan is a tax-qualified retirement plan² under which benefits are payable upon the participant's retirement or death. The Plan provides that benefits may not be assigned or alienated except in the case of a "qualified domestic relations order." Bruce A. Nordstrom is a Plan participant whose benefit account is not in pay status.

Bruce Nordstrom's wife, Frances W. Nordstrom, died October 5, 1984. Her will was admitted to probate in the Superior Court for the State of Washington at King County (the Court). Subsequently, the estate of Frances Nordstrom (the Estate) filed a petition asking the Court to require the Plan to divide and segregate that portion of Bruce Nordstrom's benefits which represents the interest of the Estate. You indicate the request was made on the grounds that, inter alia, Frances Nordstrom owned at her death an undivided one-half community interest in Bruce Nordstrom's accrued benefits pursuant to the community property law of the State of Washington and that a court order for such division and segregation of benefits could issue in accordance with section 206(d)(3) of ERISA. The Court granted the petition and entered an order styled "Qualified Domestic Relations Order and Order Dividing Retirement Plan Benefits" (the Court Order).

¹ For convenience, this letter refers to the provisions of section 206(d) of ERISA rather than to the corresponding provisions in sections 401(a)(13)(B) and 414(p) of the Internal Revenue Code, to which your request refers.

² You indicated in a telephone conversation with a representative of this Office that the Plan has a number of participants and is covered by title I of ERISA.

You request the views of the Department of Labor concerning whether the community property law of the State of Washington is preempted by section 514 of ERISA and whether the Court Order falls within the scope of section 206(d)(3) of ERISA. Section 514(a) of ERISA generally preempts all state laws insofar as they relate to employee benefit plans covered by title I of ERISA. Therefore, a state community property law that considers the pension earned by a married spouse to be community property is preempted under this provision, unless some exception applies.

Section 514(b) of ERISA specifies certain exceptions from the broad preemptive effect of section 514(a). Of those exceptions, only that provided by section 514(b)(7) has relevance to community property laws. Section 514(b)(7) states that preemption under section 514(a) does not apply to "qualified domestic relations orders" within the meaning of ERISA section 206(d)(3)(B)(i).

Section 206(d)(1) of ERISA generally requires pension plans covered by title I of ERISA to provide that plan benefits may not be assigned or alienated. Section 206(d)(3)(A) of ERISA states that section 206(d)(1) applies to an assignment or alienation of benefits pursuant to a "domestic relations order," unless the order is determined to be a "qualified domestic relations order" (QDRO). Section 206(d)(3)(A) further provides that pension plans must provide for payment of benefits in accordance with the applicable requirements of any QDRO.

Section 206(d)(3)(B) of ERISA defines the terms "qualified domestic relations order" and "domestic relations order" for purposes of section 206(d)(3) as follows:

(B) For purposes of [section 206(d)(3)] --

(i) the term "qualified domestic relations order" means a domestic relations order--

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which --

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law). (emphasis added)

The term "alternate payee" is defined by ERISA section 206(d)(3)(K) to mean "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant."

Sections 514(b)(7) and 206(d)(3) of ERISA were enacted as part of the Retirement Equity Act of 1984 (REA), which aimed primarily at assuring greater and more equitable opportunity for women working as employees or homemakers to receive private pension income. The legislative history of the QDRO provisions of REA contains numerous statements indicating that Congress was focusing on the division of pension benefits in marital dissolution or dependent support situations. For example, Congressman William Clay described the QDRO provisions during a House floor debate on the legislation as follows:

Finally, women may be denied their rights to pension benefits by the dissolution of a marriage by divorce, regardless of how many years she served as an economic partner to a man covered by a pension plan. Even in cases in which the State domestic relations court is willing to consider the pension an asset of the marriage and award the ex-wife a share of it, her rights have been thwarted. Pension plans have refused to honor those court orders claiming that they required an impermissible assignment of benefits and were preempted by ERISA.

H.R. 4280 makes it clear that honoring a legitimate State court order awarding an ex-spouse some or all of a worker's pension does not violate the antiassignment clause of ERISA. In addition, the legislation creates an exception from ERISA's broad preemption of State laws for qualified domestic relations orders.³

Moreover, the report of the Senate Committee on Finance made specific mention of state community property laws in observing that "[s]everal cases have arisen in which courts have been required to determine whether the ERISA preemption and spendthrift provisions apply to family support obligations (e.g., alimony, separate maintenance, and child support obligations)."⁴ The report noted "[t]here is a divergence of opinion among the

³ 130 Cong. Rec. 13327 (1984).

⁴ S. Rep. No. 575, 98th Cong., 2d Sess. 18 (1984).

courts as to whether ERISA preempts State community property laws insofar as they relate to the rights of a married couple to benefits under a pension, etc., plan,"⁵ and cited two cases in which application of state community property law to pension benefits was at issue in the context of marital dissolution proceedings.⁶

It thus appears Congress generally intended that the QDRO provisions of ERISA would have application in those court proceedings conducted primarily to resolve domestic relations issues. With respect to ERISA section 206(d)(3)(B)(ii)(II), it is the view of the Department of Labor that Congress intended the QDRO provisions to encompass state community property laws only insofar as such laws would ordinarily be recognized by courts in determining alimony, property settlement and similar orders issued in domestic relations proceedings. We find no indication Congress contemplated that the QDRO provisions would serve as a mechanism in which a non-participant spouse's interest derived only from state property law could be enforced against a pension plan.

In the case at hand, the Court Order was issued in a probate proceeding and would recognize an interest in pension benefits of the surviving spouse solely on the basis of the state community property law. Consistent with the views discussed above, it is the opinion of the Department of Labor that the Court Order is not a "domestic relations order" within the meaning of section 206(d)(3)(B)(ii) of ERISA and, therefore, does not constitute a QDRO for purposes of sections 206(d)(3) and 514(b)(7) of ERISA. Accordingly, it is the opinion of the Department of Labor that the Court Order is unenforceable against the Plan.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations

⁵ Id. 19.

⁶ The cases cited were Stone v. Stone, 632 F. 2d 740 (9th Cir. 1980) and Francis v. United Technology Corp., 458 F. Supp. 84 (N.D. Cal. 1978).