U.S. Department of Labor Labor-Management Services Administration
Washington, D.C. 20216

Reply to the Attention of:

Pension and Welfare Benefit Programs
AO 81-19A

FEB 5 1981

Ms. Jane B. Stranch
Branstetter, Moody & Kilgore
200 Church Street
Fourth Floor
Nashville, Tennessee 37201

Dear Ms. Stranch:

This is in response to your letter of May 21, 1980, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). You ask whether the Remembrance Fund of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 572 (the Remembrance Fund) is exempted from the reporting and disclosure provisions of ERISA.

You represent that on May 1, 1977, the Steamfitters Local Union No. 572 and the Plumbers Local Union No. 352 merged into one local union known as the Plumbers and Pipefitters Local 572 (Local 572). Prior to the merger of these unions, each had maintained an updated death benefit fund in which union members participated on a voluntary basis. On May 1, 1977, Local 572 entered into a new collective bargaining agreement which did not provide for a death benefit fund. However, the merging unions consolidated their death benefit funds into the Remembrance Fund by a combined Agreement and Declaration of Trust executed on May 1, 1977, which required contributions by all members of Local 572. Further, the Agreement and Declaration of Trust of the Remembrance Fund stated that the purpose of the monies collected by the Remembrance Fund was to provide burial expenses of $1500 to members of Local 572.

Pursuant to section 4 of title I of ERISA, title I of ERISA applies to any plan (including an employee welfare benefit plan) which is not exempt under section 4(b). Section 3(1) of ERISA defines an "employee welfare benefit plan" as "… 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) … benefits in the event of sickness, accident, disability, death or unemployment, … 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)."

Department of Labor regulation section 29 CFR 2510.3-1(g), issued August 15, 1975, states that, for purposes of title I of ERISA, the term "employee welfare benefit plan" shall not be considered to include a program under which contributions are made to provide remembrances such as a small gift on occasions such as the sickness, hospitalization or death of employees, members of an employee organization or members of their families.

The Remembrance Fund was established and is to be maintained by an employee organization for the purpose of providing a benefit in the event of death which is a benefit described in ERISA section 3(1). It appears that the Remembrance Fund is not exempt as a remembrance fund as described in regulation section 2510.3-1(g) since the Remembrance Fund will provide $1500 per deceased member rather than merely providing a "small gift" on the occasion of death. It is the Department's position, therefore, that the Remembrance Fund would be an employee welfare benefit plan within the meaning of ERISA section 3(1). Since, there is no indication that the Remembrance Fund would be exempt under section 4(b), it must comply with all applicable requirements of ERISA title I including part 1 which pertains to reporting and disclosure.

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,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs