

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:
Pension and Welfare Benefit Programs

OPINION 81-51A
3(1), 3(4), 3(5)

JUN 9 1981

Mr. Richard D. Hillyer
Galbraith & Green, Inc.
12400 North Freeway
Suite 210
Houston, Texas 77060

Dear Mr. Hillyer:

This is in reply to your letter of February 10, 1981, regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether several insurance programs of the American Association of Petroleum Landmen (AAPL) are covered by title I of ERISA.

The materials submitted with your request indicate that AAPL offers programs of life insurance, medical insurance, accidental death benefits, disability insurance, and in-hospital indemnity to its members and their employees. The benefits are funded through group insurance contracts for which AAPL is the contract holder. Section 1 of Article V of the AAPL By-Laws defines the term "landman" as any "... person primarily responsible for the acquisition and management of interests in oil, gas and all other mineral estates in land." There are six classes of membership in AAPL for any landman predominantly engaged in professional land work relating to the mineral and energy industries:

- a. Active - for professional landmen having 3 years active experience and who have been recommended by three active members.
- b. Associate - for professional landmen with less than 3 years active experience and for persons associated with land work relating to the mineral and/or energy industries.
- c. Golden Lease - life membership conferred upon past presidents of AAPL.
- d. Honorary Life - for certain retired landmen.
- e. Life - for active or associate members who make a payment of \$1000.

- f. Honorary - conferred upon individuals closely associated with the mineral and/or energy industries who have rendered outstanding service or a noteworthy contribution to the industry.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" to include "... any plan, fund, or program ... 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, ... 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)."

Although the Programs provide benefits among those identified in section 3(1)(A), in order to be employee welfare benefit plans, the Programs must, among other criteria, also be established or maintained by an employer, by an employee organization, or by both.

Section 3(4) of ERISA defines the term "employee organization" as "... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan." The AAPL is not an employee organization within the meaning of the first part of the definition (before the semi-colon) because it does not deal with employers concerning either an employee benefit plan or other matters incidental to employment relations. Additionally, it is the Department's position that AAPL is not an employees' beneficiary association as that term has been interpreted by the Department of Labor since it does not appear that a commonality of interest with respect to employment relationships exists among members of AAPL.

ERISA section 3(5) defines the term "employer" to include any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity. AAPL is not the employer of all the participants in the Programs nor is AAPL a group or association of employers acting for an employer in such capacity as defined in section 3(5) since the AAPL By-Laws indicate that membership in AAPL is available to anyone in the profession whether they are an employee or an employer. Further, in offering the Programs to all its members as members, AAPL can not be said to be acting as or for an employer.

Accordingly it is the position of the Department of Labor that the insurance programs offered to its members by the American Association of Petroleum Landmen are not employee welfare benefit plans within the meaning of ERISA section 3(1) and are not covered by title I of ERISA.

However, if an employer within the meaning of section 3(5) adopts one or more of the Programs for the purpose of providing benefits listed in section 3(1) for its employees, that employer would have established an employee welfare benefit plan with regard to such employees.

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