

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-82A
Sec. 3(32)

NOV 23 1981

Mr. Richard A. Hemmings
National Association of Insurance Commissioners
Suite 1015
633 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203

Dear Mr. Hemmings:

This is in reply to your letter of May 4, 1979, submitting a current plan document in connection with your request for an advisory opinion regarding applicability of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, your request, which was originally submitted along with notice to the Department that reports required under ERISA title I would no longer be filed, concerns whether a retirement plan and trust for employees of the National Association of Insurance Commissioners (NAIC) is a governmental plan within the meaning of ERISA.

The NAIC is an unincorporated association whose membership consists of the insurance commissioners of the 50 States, Guam, Puerto Rico and the Virgin Islands. The NAIC has been in continuous operation under its governing body elected from among its membership since its establishment in 1871. The insurance commissioner is the principal insurance regulatory authority in State government who has the responsibility for regulating the insurance business. To assist the commissioners in the operation of the organization, the NAIC has two staffs, the Executive Secretary's Office and the Valuation of Securities Office. The Executive Secretary's Office provides staff research support, and administrative services to the NAIC in general and individual insurance departments in particular. The primary function of the Valuation of Securities Office is to value insurance company investments for purposes of providing uniformity when insurance companies submit the annual statements each year to the insurance departments. The bulk of financial support to the Executive Secretary's Office comes from assessments against the individual state insurance departments. The Valuation of Securities Office receives its funds from several sources. Several states have statutes authorizing assessments against those states based upon the admitted value of stocks and bonds of life insurance companies therein. In addition, other states make voluntary contributions out of the state insurance department budget. Other sources of funds include the sale of the valuation manual, and fees for certain services provided.

Article 2 of the Constitution of the NAIC provides that the object of this Association shall be to promote uniformity in legislation affecting insurance; to encourage uniformity in departmental rulings under the insurance laws of the several states; to disseminate information of value to insurance supervising officials in the performance of their duties; to establish ways and means of fully protecting the interests of insurance policyholders of the various states, territories and insular possessions of the United States; and to preserve to the several states the regulation of the business of insurance.

You have submitted, among other things, the following letters in support of your request for an advisory opinion:

1. A letter dated May 23, 1955, from H. T. Swartz, Director, Tax Rulings Division, Office of the Commissioner of Internal Revenue, United States Department of the Treasury, designating NAIC as an instrumentality wholly owned by the states for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act.
2. A letter dated December 7, 1973, from Leonard J. Lurie, Director, Office of Labor-Management and Welfare Pension Reports, Labor-Management Services Administration, United States Department of Labor, concluding that NAIC is a State agency or instrumentality and that the retirement plan it administers for its employees is a governmental plan excluded from coverage by the Welfare Pension Plans Disclosure Act (the WPPDA).
3. A letter dated August 30, 1974, from L. M. Phillips, District Director, Internal Revenue Service, stating that NAIC "... is an instrumentality of the states as manifested by the interest, authority, and powers exercised by their official representatives ...," and concluding that NAIC is exempt from Federal excise taxes.
4. A letter dated May 1, 1969, from Hugh F. McKenna, Director, Bureau of Retirement and Survivors Insurance, Social Security Administration, United States Department of Health, Education and Welfare, indicating that NAIC, as an interstate instrumentality has the status of a state for purposes of coverage by Social Security.

The definition of a governmental plan provided in section 3(32) of ERISA includes "a plan established or maintained for its employees" by an agency or instrumentality of the government of any state.

In view of the substantial contributions by the several states to NAIC for its operation, including its retirement plan and trust for employees, and the interrelationships among the states, the

insurance departments of the several states, and the NAIC, we conclude that the retirement plan for NAIC employees is a governmental plan within the meaning of ERISA section 3(32) and is, therefore, excluded by ERISA section 4(b)(1) from coverage under title I of ERISA.¹

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

¹ This opinion takes no position as to whether NAIC constitutes specifically an "agency" or an "instrumentality" of State government or concerning whether employees of NAIC are employees of any specific governmental unit.