

U.S. Department of Labor

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



Reply to the Attention of:
Pension and Welfare Benefit Programs

OPINION NO. 82-16A
Sec. 514

MAR 8 1982

Mr. Don D. Carlson
Dorsey, Windhorst, Hannaford, Whitney & Halladay
2300 First National Bank Building
Minneapolis, Minnesota 55402

Dear Mr. Carlson:

This is in response to your request for an advisory opinion regarding the preemption of state laws under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Minnesota State usury laws are preempted under section 514 of title I of ERISA.

You represent that Consulting Radiologists, Ltd. Employees' Profit Sharing Plan (the Plan) proposes to make a loan to a plan participant. The proposed loan bears a rate of interest which the plan fiduciaries have determined to be reasonable, but which may violate Minnesota State usury laws. Chapter 334, section 334.01(1) of Minnesota Statutes, a civil law, generally limits the rate of interest on loans to 8 percent per annum. You indicate that the hardship to the Plan and the borrowing participant that would result if the loan is found to be usurious is great. Minnesota Statutes §334.02 states that all principal and interest paid would have to be forfeited by the Plan and the entire amount of the unpaid debt would be forgiven. Consequently, you request that the Department determine that the Minnesota usury law is preempted under section 514 of title I of ERISA.

Section 514 of title I of ERISA provides, in part as follows:

- (a) Except as provided in subsection (b) of this section, the provisions of ... [titles I and IV of ERISA] shall supersede any and all State laws insofar as they may not or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b) ...
- (b)(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

Section 514 does not preempt only those state laws which conflict with ERISA but all state laws relating to employee benefit plans. The reasons for broad preemption of state laws were succinctly stated by Senator Javits during final congressional consideration of ERISA.

Both the House and Senate bills provided for preemption of State law, but -- with one major exception appearing in the House Bill -- defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension plans not clearly connected to the Federal regulatory scheme.

Although the desirability of further regulation - at either the State or Federal level - undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required - but for certain exceptions - the displacement of State action in the field of private employee benefit programs. 120 Cong. Rec 29942 (Aug. 22, 1974).

Section 5.14(b)(2)(A) of ERISA provides an exception from the preemption provision of section 514(a) for those state laws regulating banking, insurance, and securities. However, the Minnesota usury law is not by its own terms limited to regulating insurance, banking, or securities. Rather, the Minnesota law is a broad proscription regulating all lending transactions in Minnesota including the lending activity of employee benefit plans.

Therefore, since the Minnesota usury statute purports to regulate all loan transactions within the state, it would be preempted by ERISA section 514(a) to the extent it applies to employee benefit plans.

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,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs