

U.S. Department of Labor

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



Reply to the Attention of:

Opinion No. 82-25A
Sec. 3(1), 3(4)

JUN 8 1982

Mr. Kendrick King
Assistant Prosecuting Attorney
Prosecuting Attorney of McDowell County
Post Office Drawer AE
Welch, West Virginia 24801

Dear Mr. King:

This is in further reply to your letter of August 25, 1981, regarding the status of the Jacobs Fork Operation Burial Fund Association (the Association) under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). As you were previously informed in a letter from Richard G. Hunsucker, Director, Office of Labor-Management Standards Enforcement, while the Association did not appear to be covered by the LMRDA, he transferred your letter to this Office in the event the Association is covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You advise that the Association is a voluntary association of employees at a coal mine site in McDowell County, West Virginia. The Association is not affiliated with the United Mine Workers of America. The purpose of the Association is to provide death benefits in the event of the death of a member or of certain dependents of a member. The death benefits vary according to the schedule of benefits in Article IV, Section I of the By Laws of the Association from \$150 upon the death of a member's child under 4 years of age to \$1,000 upon the death of the member or his wife. Each member is assessed a monthly fee which may be adjusted to maintain a reserve of not less than \$15,000 to provide the promised benefit.

Section 3(1) of title I of ERISA defines the term "employee welfare benefit plan" to include:

... 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).

The term "employee organization" is defined in section 3(4) of ERISA to include both an organization of employees which deals with employers, such as a labor union, and an employees' beneficiary association organized for the purpose, in whole or in part, of establishing a welfare or pension plan. Although the term "employees' beneficiary association" is not defined in ERISA, the Department of Labor (the Department) generally considers a group or association of employees that is not a labor union or other employee organization dealing with employers concerning employee benefit plans to be an employees' beneficiary association if membership in the group is conditioned on an individual's employment status (e.g., where membership is limited to employees of a certain employer or members of a certain union) and if the group has some degree of formal organization. In the case of the group of employees participating in the Association, membership is based on employment with the Jacobs Fork Operation of the Hawley Coal Mining Corporation and the formal organization of the group is evidenced by its bylaws. In our opinion, therefore, the Association is an employees' beneficiary association, if it were organized for the purpose of establishing an employee welfare benefit plan.

The Department's regulation 29 C.F.R. §2510.3-1(g) excludes from the definition of an "employee welfare benefit plan" certain remembrance funds. A remembrance fund is any "program under which contributions are made to provide remembrances such as flowers, an obituary notice in a newspaper or a small gift on occasions such as the sickness, hospitalization, death or termination of employment of employees, or members of an employee organization, or members of their families." However, it is the Department's view that the death benefits provided by the Association would not be merely remembrances as contemplated by the regulation. It is the Department's position that the benefits provided by the Jacobs Fork Operation Burial Fund Association constitute an employee welfare benefit plan within the meaning of title I of ERISA. Accordingly, the employee welfare benefit plan established by the Association would have to meet the requirements of that title, including the reporting and disclosure requirements of part 1 of ERISA title I.

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

cc: Jacobs Fork Operation Burial Fund Association