

U.S. Department of Labor

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



Reply to the Attention of:
OPINION NO. 82-48A
Sec. 3(1), 3(5)

SEP 16 1982

Mr. Gene M. Williams
Mehaffy, Weber, Keith & Gonsoulin
San Jacinto Building
Beaumont, Texas 77701

Dear Mr. Williams:

This is in reply to your letters of February 4, 1982, and December 16, 1981, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Major Medical Plan (the Plan) of Orange Memorial Hospital Corporation (the Hospital) would still constitute an employee benefit plan covered under title I of ERISA if it is also extended to cover employees of the Orange County Ambulance Service (the Ambulance Service).

You state that the Hospital is a non-profit corporation operating a hospital in Orange, Texas. It currently maintains the Plan for its 350 eligible employees through an "administrative services only" agreement with Northwestern National Life Insurance Company, Minneapolis, Minnesota. You further advise that the Ambulance Service, also a non-profit corporation, provides public ambulance service for the Orange County, Texas, area. The Ambulance Service has 20 employees for whom it would like to provide adequate medical benefits. Accordingly, the Ambulance Service, to economically provide such coverage, proposes to join the Plan under the same terms and conditions. You state there would be no change in coverage or discrimination among employees and that employees of both the Hospital and the Ambulance Service would be treated equally in all circumstances. The Ambulance Service is located on the premises of the Hospital and both share the goal of providing proper and inexpensive health care and emergency services to the people of Orange County. You also stated that the Board of Directors of the Hospital appoints the Board of Directors of the Ambulance Service and that there are directors in common. In a letter dated February 4, 1982, you further advised that neither the Hospital nor the Ambulance Service was created by a governmental entity, is funded by such an entity, or has directors appointed by such an entity. You argue that the Hospital and the Ambulance Service should be considered a single employer for the purposes of title I of ERISA.

In order to satisfy the definition of an "employee welfare benefit plan" or "welfare plan" set forth in section 3(1) of ERISA, a plan must, among other criteria, provide welfare benefits, including the type provided by the Plan and be "established or maintained by an employer or by an

employee organization, or by both." Since there is no indication that an employee organization is involved in any manner with the Plan, this letter will only consider whether it is established or maintained by an "employer."

Section 3(5) of ERISA, provides, "[t]he term 'employer' means 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."

Inasmuch as the Board of Directors of the Ambulance Service is appointed by the Board of Directors of the Hospital, it is the position of the Department of Labor that the Hospital and the Ambulance Service are under common control for the purposes of title I of ERISA and would constitute an "employer" within the meaning of section 3(5) of ERISA.

Accordingly, the Major Medical Plan would not cease being a single employee welfare benefit plan within the meaning of section 3(1) of ERISA merely because the employees of the Ambulance Service are covered thereunder.

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