

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-49A
Sec. 3(1), 3(5)

SEP 30 1983

Mr. John E. Featherson
President
Mid America Trust Administrators, Inc.
9202 N. Meridian Street, Suite 160
Indianapolis, Indiana 46260

Dear Mr. Featherson:

This is in reply to your letter and correspondence requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Owner-Operator Group Trust Health Plan (the Group Trust) is an employee welfare benefit plan within the meaning of ERISA section 3(1) and therefore exempt under ERISA section 514(b)(2)(B) from treatment as an "insurance company or other insurer."

You advise that since 1956 a life and health benefit program has been offered to owner-operators who are exclusively under contract with Mayflower Corporation, Indianapolis, Indiana (Mayflower), to drive trucks or who drive Mayflower leased trucks or who are Mayflower agents and to their employees. Originally administered by Edward B. Morris Associates Inc., Indianapolis, Indiana, and fully insured by two Indianapolis insurance companies, the program was "sold" in 1979 to Gentry Insurance Agency, Inc. (Gentry), a wholly owned subsidiary of Mayflower. At the same time the program became self-insured. Under a 1979 trust agreement, Indiana National Bank was named as trustee and Mid America Trust Administrators, Inc. (Mid America), was named Administrator of the Owners and Operators Trust Fund. Gentry signed the trust agreement on behalf of the Owners and Operators Group Trust.

ERISA section 3(1) defines the term "employee welfare benefit plan" to include plans which provide life insurance or health benefits. However, in order to be an employee welfare benefit plan, an entity must not only provide benefits identified in section 3(1), but also, among other criteria, be "established or maintained by an employer or by an employee organization, or by both"

The terms "employee organization" and "employer" are defined in ERISA sections 3(4) and 3(5) respectively as:

(4) the term "employee organization" means 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.

(5) The 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.

From the information you submitted, the Department concludes that the Group Trust was neither established nor is maintained by an employee organization within the meaning of ERISA section 3(4). There is no indication that the employees covered under the Group Trust participate in any cognizable organization of employees to which that statutory definition may be applied.

The Department also considered whether Mayflower, the "Owners and Operators" association, Gentry, or Mid America would constitute an employer within the meaning of ERISA section 3(5) in relation to the Group Trust. For the reasons specified below, it is the Department's position that none of these entities is an employer within the meaning of section 3(5) with regard to the Group Trust. Mayflower is not the employer of all the participants in the Group Trust. Nor is there any indication that it acts in relation to the Group Trust on behalf of the agents and drivers who have agreed to participate in the Group Trust.

With regard to the "Owners and Operators" association, although the 1979 trust agreement refers to the "Owners and Operators" as an association of drivers and owners of trucks, there is no indication such an entity actually exists.

Similarly, it is the Department's position that neither Gentry nor Mid America is an employer within the meaning of section 3(5) of title I of ERISA in relation to the Group Trust. Neither of these organizations is the employer of the agents and drivers covered under the Group Trust, and, neither of the organizations can be considered to be acting indirectly in their interests as employers in relation to the Group Trust.

Therefore, the Department concludes, on the basis of the information you provided, that the Group Trust is not an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA. As noted above, this conclusion does not mean that agents and drivers whose employees are covered under the Group Trust have not established individual employee welfare benefit plans subject to ERISA for their employees, or that persons who act in fiduciary capacities with respect to those plans are not subject to the fiduciary obligations imposed by part 4 of title I of ERISA, 29 U.S.C. 81011 et seq.

ERISA section 514(b)(2)(B) provides that:

Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

Since the Department concludes that the Group Trust is not an employee welfare benefit plan (and there is no indication it is an employee pension benefit plan), the Group Trust would not be an employee benefit plan described in section 4(a). Therefore, section 514(b)(2)(B) of ERISA would not preclude applicable state regulation. Furthermore, it should be noted that, even if the Group Trust were an employee benefit plan described in section 4(a), the Group Trust might still be subject to state regulation. The Act of January 14, 1983 (Pub. L. 97-473), amended section 514 of ERISA to provide that, to the extent provided in subsection 514(b)(6) of ERISA, state law may apply to a multiple employer welfare arrangement within the meaning of section 3(40) of ERISA.

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,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs