

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 84-16A
Sec. 3(1), 3(4), 3(5), 3(40) and 514

MAR 23 1984

Mr. Hector De Leon
De Leon & Boggins
408 First Federal Plaza
200 E. 10th Street
Austin, TX 78701

Dear Mr. De Leon:

This is in reply to your letter of September 29, 1983, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Master Employers Trust is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that the Master Employers Trust was established in 1977 for the purpose of providing comprehensive and total dental health care to participating employers, their employees, and eligible dependents. Under Article II, section 2.01(g) of the Trust Agreement dated October 24, 1977, the term "Participating Employer" is defined as:

(g) "Participating Employer" - Any individual, employer, whether a corporation, partnership, sole proprietorship, an association, or otherwise, which satisfies such requirements for the participation as may be established by the Benefit Committee and which adopts, in writing, this Agreement and agrees to be bound by the terms and conditions thereof as the same may from time to time be amended and modified.

The Master Employers Trust is under the control of a Benefit Committee whose members serve until death, incapacity, resignation, or removal. Members of the Benefit Committee may be removed by vote of Participating Employers. Although the initial members of the Benefit Committee were selected by the Trustors, subsequent members are appointed by the remaining member or members of the Benefit Committee.

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) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, 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).

In Opinion 79-54A (issued August 3, 1979, copy enclosed), the Department of Labor took the position that the Master Employers Trust did not constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA because it was not established or maintained by either an employer within the meaning of section 3(5) of ERISA or an employee organization within the meaning of section 3(4) of ERISA.

Based on the information you submitted, we see no reason, at this time, to change the position stated in Opinion 79-54A. Accordingly, it is still the view of the Department of Labor that the Master Employers Trust is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Although the Master Employers Trust is not an employee benefit plan because it is not a program of benefits established or maintained by an employer or employee organization within the meaning of ERISA, any employer that establishes or maintains a welfare benefit plan for its employees through Master Employers Trust, however, may have established a separate employee welfare benefit plan covered by title I of ERISA.

We would point out, moreover, that Master Employers Trust appears to be a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA, as amended by the Act of January 14, 1983 (Pub. L. 97-473). Section 514(b)(6) of ERISA, as amended, provides, in part, that in the case of a MEWA which is a fully insured employee welfare benefit plan, and notwithstanding any other provision of section 514, state law which regulates insurance may apply to the extent that such law provides standards requiring the maintenance of specified levels of reserves and levels of contributions which any such plan, or any trust established under such a plan, must meet in order to pay benefits when due. Section 514(b)(6) further provides that in the case of any other employee welfare benefit plan which is a MEWA, state insurance law may apply to the extent not inconsistent with title I of ERISA.

Accordingly, even if Master Employers Trust were an employee welfare benefit plan, or a trust established under such a plan, within the meaning of title I of ERISA, state insurance law would apply to it in the manner summarized above because it appears that Master Employers Trust would be a MEWA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs

Enclosure