

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



OPINION NO. 84-23A
Sec. 3(1), 3(4), 3(5), 514

MAY 23 1984

Mr. Jon M. Masters
Attorney at Law
Suite 750, Citizens Tower
2200 Classen Blvd.
Oklahoma City, OK 73106

Dear Mr. Masters:

This is in reply to your letter of January 23, 1984, requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you are concerned with the status of the Central States Region Voluntary Employees' Beneficiary Association Trust (the Trust) under title I of ERISA.

You advise that the Trust was created on January 1, 1984, pursuant to a Trust Agreement between Mr. Jerry F. Mustain on behalf of the "members in good standing of any duly organized labor or trade union in the United States" thereafter referred to as the Association and Mr. J. Michael Williams, Mr. Mustain, and yourself (collectively referred to as the Trustee). On the same day, the Trust adopted the Central States Region Voluntary Employees' Beneficiary Association Trust Medical Plan (the Medical Plan) to provide health benefits to covered individuals. Participants in the Medical Plan must be participants in a participating employee group. The term "Employee Group" is defined in the Medical Plan as, "... an aggregation of eligible participants, whether as employees of a particular employer, members of a particular local or association, or otherwise." Powers to amend the Trust, to remove the Trustee and appoint a successor, and to terminate the Trust are reserved to the Association. Article VIII, Section 8.2 of the Trust Agreement provides that, "The Association shall include all participating members of any duly organized labor or trade union in the United States of America, represented by an advisory board composed of the ranking union member in each participating employee group, or his designated agent."

The term "employee welfare benefit plan" is defined in section 3(1) of title I of ERISA 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).

Although the Trust provides benefits among those identified in section 3(1) of ERISA, in order to be an employee welfare benefit plan, the Trust must, among other criteria, be established or maintained by an employer or an employee organization, or by both. The terms "employee organization" and "employer" are defined in section 3(4) and 3(5) of ERISA respectively as follows:

(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.

Based on the information you submitted, it is the position of the Department of Labor (the Department) that the Trust was not established and is not maintained by an employer within the meaning of section 3(5) of ERISA. There is no indication that any employer will ever exert any control over the Trust or the Medical Plan. The Association which is given the authority to amend or terminate the Trust and to replace the Trustee is composed of members of labor unions and not employers.

Further, the Trust (and the Medical Plan) was not established and is not maintained by an employee organization within the meaning of the first part of section 3(4) of ERISA (before the semi-colon). There is no indication that the Association (or the Trust) exists for the purpose of dealing with employers concerning an employee benefit plan or other matters incidental to employment. This is not altered by the fact that the Association's members are also members of other organizations which may be employee organizations within the meaning of the first part of section 3(4) of ERISA.

It is also the Department's position that neither the Association nor the Trust constitute an employees' beneficiary association within the meaning of the second part of section 3(4) of ERISA (after the semi- colon).¹ Although the term "employees' beneficiary association" as used in section 3(4) is not defined in ERISA, the Department has developed certain criteria to be used in construing the term "employees' beneficiary association". Those criteria are: 1) Membership in an employees' beneficiary association is conditioned on employment status -- for example, membership might be limited to employees of a certain employer or members of one union; 2) An employees' beneficiary association has a formal organization, with officers, bylaws, or other indications of formality; 3) As distinguished from organizations described in the first part of the definition of "employee organization," an employees' beneficiary association does not deal with an employer; 4) An employees'

¹ It should be noted that this conclusion is solely for the purposes of title I of ERISA and is not intended to affect the status of the Trust under section 501(c)(9) of the Internal Revenue Code.

beneficiary association which is an "employee organization" within the meaning of the statute is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

The first criterion requires an association's members to have some commonality of interest with respect to their employment relationships. This commonality of interest involves more than mere employment or union membership. Since the membership of the Association is open to members of any labor or trade union the requisite commonality of interest is not present, and therefore the Association is not an employee beneficiary association within the meaning of section 3(4) of ERISA.

Accordingly, the Trust (and Medical Plan) is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA and is not covered by title I of ERISA. However, if an employer within the meaning of section 3(5) of ERISA adopts the Medical Plan for the purposes of providing its employees health benefits, that employer would be considered to have established and maintained a separate, single-employer employee welfare benefit plan. Similarly, an employee organization within the meaning of section 3(4) would be considered to have established a separate employee welfare benefit plan if it adopted the Medical Plan to provide health benefits to its members.

Section 514(a) of title I of ERISA generally preempts any state law which relates to an employee benefit plan unless the plan is a multiple employer welfare arrangement. However, since, as noted above, it is the position of the Department that neither the Trust nor the Medical Plan is an employee welfare benefit plan (and there is no indication either is an employee pension benefit plan), section 514(a) would not preempt any state law from applying to the Trust and the Medical Plan. It is therefore unnecessary to determine whether the Trust fits within the definition of a "multiple employer welfare arrangement" set forth in section 3(40) of ERISA or whether it is described in one of the exclusions to that definition.

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