

U.S. Department of Labor

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



MAY 16 1985

85-22A
Sec. 3(1), 3(5), 3(4)

Mr. Leo Jordan
President
Jordan/Spillers, Inc.
2900 Mossrock, Suite 300
San Antonio, Texas 78230

Dear Mr. Jordan:

This is in reply to your letter of November 20, 1984, concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an advisory opinion concerning whether the Express-News Federal Credit Union (the Credit Union) Group Legal Services Plan (Group Legal Services) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

Your correspondence contains the following facts and representations. Group Legal Services was established to provide prepaid legal services to participating members of the Credit Union. According to the Credit Union's charter/bylaws, the Credit Union's field of membership includes the following:

1. Employees of Express-News Corporation (a wholly-owned subsidiary of News America Publishing, Inc.) who work in or are paid from San Antonio, Texas;
2. Employees of Users Systems Services, Inc. (a majority-owned subsidiary of News America Publishing, Inc.) who work in or are paid from San Antonio, Texas;
3. Employees of Harte-Hanks Television, Inc. who have a day-to-day working relationship with the employees of subsidiaries of News America Publishing, Inc. and who work in San Antonio, Texas;
4. Independent contractors of the Express-News Corporation who work in San Antonio, Texas and sell Express-News Corporation papers exclusively;
5. Unremarried spouses of persons who died while within the field of membership of this credit union;

6. Employees of this credit union;
 7. Persons retired as pensioners or annuitants from the above employment;
 8. Members of their immediate families; and
 9. Organizations of such persons:
10. Provided, however, that this field of membership shall not include any employees in groups of 500 or more employees who work outside of San Antonio, Texas, but the employees in any group disqualified by this exclusion may be considered within the field of membership for not more than one year after the group is so disqualified.

You indicate that the Credit Union offers Group Legal Services to its members on a voluntary basis for a small monthly fee. You also indicate that Jordan/Spillers, Inc. has been named both administrator and trustee for Group Legal Services and has contracts with the Credit Union to provide overall management and administration for Group Legal Services, to act as trustee for receipt and disbursement of funds, to select attorneys, and to provide marketing support services as required. The Trust through which benefits are provided is intended to meet the requirements of a qualified legal services plan under sections 501(c)(9) and/or 501(c)(20) of the Internal Revenue Code.

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 Group Legal Services provides benefits among those identified in section 3(1) of ERISA (i.e., prepaid legal services), in order to be an employee welfare benefit plan, Group Legal Services 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 sections 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 does not appear that Group Legal Services was established or is 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 Group Legal Services. For example, it is the Credit Union (in its capacity as an association representing its membership) and the trustee which may (in their joint discretion) continue, amend, modify, or terminate the Trust.

Further, it does not appear that Group Legal Services was established or is maintained by an employee organization within the meaning of section 3(4) of ERISA. First, with regard to the first part of that definition (before the semi-colon), there is no indication that either the Credit Union or Group Legal Services exists for the purpose of dealing with employers concerning an employee benefit plan or other matters incidental to employment. The fact that the Credit Union may enter into agreements with employers regarding payroll deductions by its members is not a sufficient basis on which to conclude that the Credit Union is an employee organization within the meaning of the first part of section 3(4) of ERISA.

Second, it does not appear that Group Legal Services or the Credit Union constitutes 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" is not defined in title I of ERISA, the Department utilizes the enumerated criteria it developed for defining the same term under the Welfare and Pension Plans Disclosure Act. In order to conclude that an association is an "employees' beneficiary association" within the meaning of section 3(4) of ERISA, the Department of Labor (the Department) must find that: 1) membership in an employees' beneficiary association is conditioned on employment status -- for example, if membership is limited to employees of a certain employer or members of one union; 2) the

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 the Internal Revenue Code.

association has a formal organization, with officers, bylaws, or other indications of formality; 3) the association generally does not deal with an employer (as distinguished from organizations described in the first part of the definition of "employee organization"); and 4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.²

Pursuant to the first criterion, an association's members must have commonality of interest with respect to their employment relationships. The commonality of interest requirement involves more than working in the same location or having a day-to-day working relationship. Since membership in the Credit Union and Group Legal Services is open to employees of employers who are unrelated, the Department is unable to find the requisite commonality of interest. Therefore, neither the Credit Union nor Group Legal Services would be considered an employees' beneficiary association within the meaning of section 3(4) of ERISA.

Accordingly, because we are unable to find, on the basis of the facts presented, that Group Legal Services has been established or maintained by an employer or by an employee organization, Group Legal Services would not itself constitute an employee welfare benefit plan within the meaning of section 3(1) of ERISA. In this regard, we also should note that the program described in the document entitled "Pre-Paid Legal Services--Your Personal Attorney on Retainer", which is apparently designed to be marketed to sponsors such as the Credit Union through or by Jordan/Spillers, Inc., would not, for the aforementioned reasons, constitute an employee welfare benefit plan. Instead, it appears that the program is designed so that unrelated employers merely execute identical trust documents.

While Group Legal Services itself does not constitute an employee welfare benefit plan within the meaning of section 3(1), an employee organization within the meaning of section 3(4) of ERISA would be considered to have established a separate employee welfare benefit plan for its members if it provides prepaid legal services to its members through Group Legal Services. Likewise, an employer providing prepaid legal services to its employees through Group Legal Services would be considered to have established a separate, single-employer employee welfare benefit plan.

However, as noted above, because Group Legal Services is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA, it is not necessary for the Department to reach the issue of whether Group Legal Services is affected by the definition of a "multiple employer welfare arrangement" (MEWA) as defined in section 3(40) of ERISA. Regardless of whether Group Legal Services is a MEWA, ERISA will not operate to limit the application of state law to it since Group Legal Services is not a plan covered by ERISA.

² Welfare and Pension Plans Disclosure Act, Interpretive Manual, Section 315.100 (1965).

You may wish to note that the Department does not "qualify" prepaid legal services arrangements under title I of ERISA (whether or not they constitute employee welfare benefit plans).

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

Sincerely,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations

Enclosure