

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



DEC 5 1986

86-26A
Sec.

Mr. James P. Rankin
Eidson, Lewis, Porter & Haynes
1300 Merchants National Bank Building
Eighth and Jackson Streets
Topeka, Kansas 66612-1252

Dear Mr. Rankin:

This is in reply to your letter of April 14, 1986, requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the group health insurance program (the Program) sponsored by the Kansas Society of Certified Public Accountants, (KSCPA) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that on September 30, 1977, KSCPA agreed to sponsor a group physician and hospital insurance program for its members and their employees. Premiums are paid by KSCPA members directly to Blue Cross and Blue Shield of Kansas and all claims or questions are made directly to Blue Cross by the KSCPA member or "unit group administrator." You further advise that KSCPA does not, directly or indirectly, control, monitor or administer any aspect of the Program.

KSCPA is a Kansas not-for-profit corporation. Among its objects, Article II, Section 1 of the KSCPA Bylaws provides:

... to unite the accountancy profession in the State of Kansas...; to promote and maintain high professional and moral standards within the accountancy profession; to safeguard the interests of certified public accountants; to develop and improve accountancy education; to establish a broader public understanding of the functions and responsibilities of certified public accountants; to work toward and cooperate with other professions to the end that business and public interests will be served; to encourage cordial relations among certified public accountants....

Under Articles III, IV, and V of the KSCPA Bylaws, there are four classes of membership as follows:

1. Regular members - any person holding a certificate from the State of Kansas as a Certified Public Accountant (CPA).
2. Associate members - any person holding a certificate from a state other than Kansas as a CPA and not otherwise eligible for membership.
3. Honorary members - confirmed by unanimous vote of KSCPA on any person who by their standing and celebrity in the community is considered eligible.
4. Life members - conferred by unanimous vote of KSCPA on any member who through his or her activities has contributed to the success and advancement of KSCPA and the profession, and who is retired or reached the age of 65.

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).

Although the Program provides benefits among those identified in section 3(1), to be an employee welfare benefit plan, the Program must, among other criteria, also be established or maintained by an employer, an employee organization, or 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.

The Department of Labor (the Department) has taken the position that where membership in a group or association is open to anyone engaged in a particular trade or profession regardless of employer status, and where control of such a group or association is not vested solely in employer members, such group or association is not a bona fide group or association of employers within the meaning of section 3(5) of ERISA. Membership in KSCPA is open to anyone engaged in a particular profession and is not conditioned on one's status as an employer. Thus, it would appear that KSCPA is not a bona fide association of employers.

Further, there is no indication that KSCPA, which sponsors the Program, is an employee organization within the meaning of section 3(4) of ERISA. KSCPA does not exist "... for the purpose, in whole or in part, of dealing with employers..." Furthermore KSCPA is not an "employees' beneficiary association" because membership in KSCPA is not conditioned upon one's employment status but rather is open to both employers and employees.

The program of benefits offered by the Program, therefore, is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA because it is not established or maintained by an employee organization or an employer, as those terms are defined in section 3(4) and 3(5) of ERISA, respectively. Any employer that establishes and maintains a welfare benefit program for its employees through the Program, however, may have established an employee welfare benefit plan covered by title I of ERISA. This letter is not, however, intended to address any of the issues surrounding the ERISA duties or obligations of KSCPA or any of its agents with respect to such an ERISA plan.

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,

Elliot I. Daniel
Associate Director for Regulations and Interpretations