

U.S. Department of Labor

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



87-01A
Sec. 3(1), 3(4), 3(5)

Jan. 5, 1987
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 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 Bar Association (KBA) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that on June 23, 1980, KBA agreed to sponsor a group physician and hospital insurance program for its members and their employees. Premiums are paid by KBA members directly to Blue Cross and Blue Shield of Kansas and all claims or questions are made directly to Blue Cross by the KBA member or "unit group administrator." You further advise that KBA does not, directly or indirectly, control, monitor or administer any aspect of the Program.

KBA is a Kansas not-for-profit corporation. Among its objects, Article I, Section 1 of the KBA Constitution provides: "... to cultivate and advance the science of jurisprudence; to promote the administration of justice; to elevate the standard of integrity, honor, and courtesy in the legal profession, and to correlate and promote the activities of its members in the interests of the legal profession and of the public." Article II, Section 1 of the KBA Constitution provides that: "Any person who is a member in good standing of the Bar of the Supreme Court of Kansas shall be eligible to membership in the Association."

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 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 KBA 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 KBA is not a bona fide association of employers.

Further, there is no indication that KBA, which sponsors the Program, is an employee organization within the meaning of section 3(4) of ERISA. KBA does not exist "... for the purpose, in whole or in part, of dealing with employers...."

Furthermore KBA is not an "employees' beneficiary association" because membership in KBA 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 does not, however, address any of the issues surrounding the ERISA duties or obligations of the Kansas Bar Association 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