

U.S. Department of Labor

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



JAN 11 1988

88-01A
Sec. 3(1), 3(5), 3(7)

Henry Rose, Esq.
Epstein Becker & Green, P.C.
Ninth Floor
1140 19th Street, N.W.
Washington, D.C. 20036

Dear Mr. Rose:

This is in response to your request, on behalf of The Travelers Insurance Company, for an advisory opinion concerning the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an opinion as to whether the Rosenberg Bank and Trust Group Life and Health Insurance Plan (the Plan) constitutes an "employee welfare benefit plan", as defined in ERISA section 3(1), for purposes of title I of ERISA and the preemption provisions thereof.

Your letter contains the following facts and representations relating to your request. Rosenberg Bank and Trust (the Bank) is a state banking corporation organized under the laws of the State of Texas. During the period at issue, 1980 through 1983, the Bank provided medical benefits for its employees pursuant to the terms of the Plan. During 1980 and until June 15, 1981 (and also during prior years), benefits under the Plan were funded by a group insurance policy issued and underwritten by Travelers. You further state that you have been advised that after June 15, 1981, another insurance company became the insurer and that the Plan is still ongoing. In the context of litigation, a question has been raised as to whether the provision of medical benefits by the Bank during the period at issue constituted an employee welfare benefit plan subject to the provisions of title I of ERISA.

Section 3(1) 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).

The term "employer" is defined in ERISA section 3(5) to mean:

... 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 term "participant" is defined in ERISA section 3(7) to mean:

... any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

Based on the facts and representations contained in your letter, it appears that the Plan was established and maintained by the Bank, as an "employer" within the meaning of ERISA section 3(5), for the purpose of providing "participants" (within the meaning of ERISA section 3(7)) benefits described in ERISA section 3(1), i.e., "medical" benefits. Accordingly, during 1980 through June 15, 1981, it is the view of the Department that the plan constituted an "employee welfare benefit plan" subject to the provisions of title I of ERISA (including section 514), unless otherwise exempt. On the basis of the information provided, it does not appear that the exemptions from title I coverage, as set forth in ERISA section 4(b), 29 CFR 2510.3-1 and 2510.3-3, applied to the Plan.

We note that a determination with respect to whether a plan, fund, or program constitutes an employee benefit plan for purposes of title I of ERISA is not conditioned upon the plan complying with the applicable title I requirements. To the extent that a plan, fund, or program constitutes an employee benefit plan subject to the provisions of title I, compliance with the applicable provisions of that title is required. Nothing contained herein, however, should be construed as expressing any views concerning the extent to which the plan at issue has complied with the requirements of title I of ERISA.

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 opinion letters.

Sincerely,

Robert J. Doyle
Acting Associate Director for Regulations and Interpretations

cc: Jamie Ruth Ebenstein, Esq.
The Travelers Companies
One Tower Square
Hartford, Connecticut 06183-1050