



Dec 7 1989

89-32A

Mr. Raymond B. Jue
Deputy Attorney General
State of California
3580 Wilshire Boulevard
Los Angeles, California 90010

Dear Mr. Jue:

This is in reply to your request for an opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Associated Benefits Trust (ABT) is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of that title.

You advise that ABT was created pursuant to a trust agreement dated December 1, 1988, between General Insurance Services, Inc. (GIS), the National Family Business Association, Inc. (NFBA) and three individuals as Trustee. The trust agreement states that NFBA is sponsoring the ABT Health and Welfare Plan to provide benefits for employees of the member employers of NFBA.

Article V, Section 5.01 of NFBA's Bylaws provide for four classes of members as follows:

(A) Qualifications, Regular Membership. Regular voting membership shall be limited to principals or their designated representative of the family owned business.

(B) Qualifications, Non-voting Membership. Except where specifically noted, the following membership classes shall have no vote nor be eligible to hold office in the society:

(1) Associate Membership of NFBA. Associate membership shall be available to any person representing a firm or corporation engaged in selling products or services to members of the NFBA; persons employed by governmental agencies and educational institutions; lawyers, certified public accountants, and other members of learned professions who provide services to associations; individuals formerly holding regular membership who no longer qualify for such membership. Policies governing the participation of Associate Members will be determined by the board of directors.

(2) Affiliate Membership of the NFBA. Affiliate Membership shall be available to all full time employees of regular NFBA members.

(C) Life and Honorary Membership. Life and Honorary Membership without voting rights may be conferred upon members of the society at such time and under such terms as the board of directors shall determine.

There is no indication that the employers utilizing ABT to provide benefits to their employees constitute a controlled group or that ABT is maintained pursuant to any collectively bargained agreement.

Section 3(40)(A) of title I of ERISA defines the term "MEWA" to include:

... an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained -

- (i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or
- (ii) by a rural electric cooperative.

Based upon the information you submitted, it is the position of the Department of Labor (the Department) that ABT is a MEWA within the meaning of section 3(40). ABT covers the employees of more than two separate, independent employers; is not maintained by a rural electric cooperative; and is not maintained under or pursuant to any collective bargaining agreement.

Although section 514(a) of ERISA provides that any state law or regulation which relates to an employee benefit plan covered by ERISA is preempted, P.L. 97-473 amended section 514(b) of title I of ERISA to provide:

(6)(A) Notwithstanding any other provision of this section-- (i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides--

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

Although section 514(b)(6)(B) provides that the Secretary of Labor may prescribe regulations under which the Department may exempt MEWAs from state regulation under section 514(b)(6)(A)(ii), the Department has previously stated that it did not see the need to prescribe regulations under section 514(b)(6)(B) to exempt MEWAs from state regulation. The Department, at this time, has not changed its position. Accordingly, the Department is not providing MEWAs exemptions under section 514(b)(6)(B) from state regulation.

It is, therefore, the Department's position that ABT is subject to state regulation at least to the extent provided in section 514(b)(6)(A), regardless of whether it is an employee benefit plan covered by title I of ERISA, because it is a MEWA within the meaning of section 3(40) of that title.

The preceding 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.

Because your request for an opinion was concerned primarily with the issue of whether or not ABT is subject to the applicable regulatory authority of the State of California's insurance laws or is saved from such authority under the general preemption provision of section 514(a) of title I of ERISA, and because of the opinion above, we have determined it is not necessary at this time to render an opinion as to whether ABT is an employee welfare benefit plan within the meaning of section 3(1) of that title.

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations