

U.S. Department of Labor

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



DEC 22 1989

ERISA OPINION 89-34A
Sec. 3(40), 514(b)(6)

Ms. Sandra Milburn
Texas Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Ms. Milburn:

This is in reply to your request for information regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Indian River Association of Free Will Baptists, Inc. Employee Benefit Trust (the Trust) is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of title I of ERISA and therefore subject to state regulation to the extent provided in section 514(b)(6)(A) of that title.

Your correspondence, and accompanying submissions, contained the following facts and representations relevant to your request. The Trust, according to the trust agreement dated April 1, 1989 (the Trust Agreement), is intended to provide group health care plan benefits to the Indian River Association of Free Will Baptists (the Association). The Trustees of the Trust are appointed by and serve at the pleasure of the Board of Directors of the Association. Under the Association's Constitution and By-Laws filed with the State of Florida on May 31, 1988, the Association has two classes of membership. Churches may affiliate themselves with the Association by adopting a specified treatise of faith and applying to the Association. Member churches are entitled to voting delegates based on the size of the church's membership. Associate membership in the Association is open to any Christian or church signing a statement of Christian faith and paying required dues. Associate members are not entitled to vote on Association matters. The Association is administered by an elected Board of Officers.

The Trust Agreement indicates that the Trust provides benefits to any employee of the Association or of any "subsidiary or affiliated corporation" of the Association. However, a letter dated April 11, 1989, and signed by Mr. James L. Christian, Sr. as Moderator of the Association states:

The Indian River Association is a body of people that have come together for the purpose of spreading the Christian faith. One can acquire membership in the association if:

1. They are a Christian.
2. By signing a statement of Christian faith.
3. By paying dues in the amount designated by the association

The Association provides benefits to its members, Health and Life Insurance being one of them. Membership requires employment in a Christian or church related field; Pastor, music, teachers, Missionaries, etc.

If a member does not conduct oneself in a fashion that is not in accordance with the Constitution and By-laws or the statement of faith, that member can be dismissed (fired) losing all benefits.

This letter does not indicate that a church or other entity where a member is employed need adopt the Trust in order for the member to receive benefits.

The principal issue raised by your correspondence appears to relate to the application of the preemption provisions of ERISA section 514 and the extent to which those provisions serve to preempt state regulation of the Trust. As discussed below, it is the view of the Department that, whether or not the Trust constitutes an "employee welfare benefit plan" within the meaning of ERISA section 3(1), the Trust would constitute a "multiple employer welfare arrangement," as defined in section 3(40) of ERISA, and thus, due to its self-funded status, would be subject at least to all applicable state insurance laws not inconsistent with title I. Accordingly, we do not believe it is necessary for purposes of this opinion to address the issue as to whether the Trust constitutes an "employee welfare benefit plan" within the meaning of ERISA section 3(1). This opinion, therefore, will be limited to the application of ERISA section 514 to the Trust.

Section 514 provides, in pertinent part, that:

(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

* * *

(b)(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of

providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

* * *

(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.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to any employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

Thus, while section 514(a) generally preempts any state law relating to an employee benefit plan covered by title I of ERISA, section 514(b)(6)(A) saves from ERISA preemption certain state insurance laws applicable to employee welfare benefit plans which constitute "multiple employer welfare arrangements" within the meaning of ERISA section 3(40).¹ ERISA section 3(40) defines the term "multiple employer welfare arrangement" to mean:

... 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.

On the basis of the information provided, the Trust was established and is maintained for the purpose of providing benefits described in ERISA section 3(1) to participants (i.e., ministers and other employees) of various Christian schools and churches (i.e., employees of two or more employers). Further, because the Trust is not established or maintained (i) under or pursuant to one or more collective bargaining agreements or (ii) by a rural electric cooperative, the exceptions to the definition of "multiple employer welfare arrangement" would not apply to the Trust.

Therefore, it is the view of the Department that, because the Trust was established and is maintained for the purpose of providing benefits described in ERISA section 3(1) to the employees of two or more employers and the Trust is not otherwise excepted, the Trust constitutes a "multiple employer welfare arrangement" within the meaning of ERISA section 3(40). Accordingly, even if the Trust were also determined to be an employee welfare benefit plan for purposes of title I of ERISA (in addition to being a "multiple employer welfare arrangement"), ERISA section 514(b)(6)(A) would serve to save from the general preemption provisions of section 514(a) any state insurance law applicable to the Trust, to the extent that such state law is not inconsistent with title I of ERISA.²

¹ Because section 514(a) only serves to preempt state laws relating to employee benefit plans subject to title I of ERISA, section 514 will not operate to limit the application of state law to a multiple employer welfare arrangement or any other arrangement which does not constitute an employee benefit plan subject to title I of ERISA.

² While the Secretary has the authority, under ERISA section 514(b)(6)(B), to establish, by regulation, a process to grant individual or class exemptions for "multiple employer welfare

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,

Robert J. Doyle
Director of Regulations and Interpretations

arrangements" which are not fully insured but are employee welfare benefit plans, the Department made a determination shortly after enactment of Public Law 97-473 that, on the basis of the information received in the course of its administration of ERISA, such an exemption process was unnecessary. The Department has not since altered its position.