

**U.S. Department of Labor**

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



AUG 2 1990

ERISA OPINION 90-27A  
Sec. 3(40), 514(b)

Mr. Tom Abel  
Colorado Division of Insurance  
First Western Plaza  
303 West Colfax Avenue, Suite 500  
Denver, Colorado 80204

Dear Mr. Abel:

This is in response to your request regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether Consumer Association for Security and Health Medical Benefit Trust (the Trust) is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of title of ERISA.

You advise that the Trust was created pursuant to a Trust Agreement dated December 14, 1988, between the Trust and several individuals as Trustees. The Trust Agreement states that the purpose of the Trust is to provide certain health or welfare benefits to Eligible Employees. The term "Eligible Employee" is defined in Article II, Section 2.02 as any employee reported by his or her Employer as such. The term "Employer" is defined in Article II, Section 2.02 as any employer who adopts the Trust and is a member of the Consumer Association for Security and Health Medical Benefit, Inc. (CASH). Under Article 2 of the CASH Bylaws, there are two classes of membership as follows:

SECTION 2.1. Voting Members. The Articles of Incorporation of this Corporation provide that this Corporation shall have members with voting rights. Any individual corporation, partnership, or association who is an employer or self-employed or such other individuals or entities as the Board of Directors shall, from time to time, determine shall be eligible for voting membership in the Corporation.

SECTION 2.2 Non-voting Members. Any individual, corporation, partnership or association which is an employer or self-employed in the Rocky Mountain Region and such other individuals or entities as the Board of Directors shall, from time to time, determine, shall be eligible for non-voting membership in the Corporation.

You stated in a telephone conversation with a representative of this Office that there is no indication that the Trust is maintained pursuant to a collectively bargained agreement and there is no indication that the participating employers in the Trust constitute a "control group" within the meaning of section 3(40)(B).

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.

Section 3(40)(B) provides in pertinent part:

For purposes of this paragraph --

- (i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,
- (ii) the term "control group" means a group of trades or businesses under common control,...

Based upon the information you submitted, it is the position of the Department of Labor (the Department) that the Trust is a MEWA within the meaning of section 3(40). The Trust 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, section 514(b) of title I of ERISA provides:

(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 such regulations. The Department, at this time, has not changed its position. Accordingly, the Department is not exempting MEWAs from state regulation.

It is, therefore, the Department's position that the Trust 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 concerning primarily the issue of whether or not the Trust is subject to the applicable regulatory authority of the State of Colorado's insurance laws or is saved from such authority under the general preemption provision of section 514(a) of title 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 the Trust 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