

U.S. Department of Labor

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



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91-07A

ERISA SEC.
3(40)

Dear Mr. Heacox:

This is in response to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act (ERISA). Specifically you ask whether the Florida Association of Blood Banks Group Insurance Trust (the Trust) is a federally regulated plan preempted from state regulation.

The information you submitted indicates that the Trust was created as a Voluntary Employee Benefit Association Trust on October 1, 1985. The purpose of the Trust is to provide "a health and welfare plan for the sole and exclusive benefit of Employees of participating Employers, their families and dependents and, to that end, to provide for any or all of the following benefits, or insurance policies providing a portion or all of such benefits: accident and health benefits including specified hospitalization, surgical, major medical, medical, dental, vision case [sic] and other similar health care benefits, including, but not limited to, life, accident and casualty benefits or disability income benefits, or any of the foregoing."

The term "employer" is defined in the Declaration of Trust to mean: "[A]ny person, partnership, joint venture, corporation company or unincorporated organization operating as a Florida blood bank or any entity which shares a common employment bond with a Florida blood bank and who is a member in good standing in the Florida Association of Blood Banks, and who has become, or hereafter becomes, a party to this Agreement by executing an employer participation and subscription agreement as hereinafter provided, and who has agreed to be bound by all the terms and provisions of this Trust, and who further has been, or is hereafter, accepted as an Employer by the Trustees."

The term "employee" is defined in the Declaration of Trust to mean: "[A]ny individual employed by an Employer within the State of Florida, or all of any class or classes thereof determined in accordance with conditions pertaining to their employment established by the Trustees. The term 'Employee' shall include retirees and others sharing a common employment bond with Employer members of the Association."

In a telephone conversation with a representative of this Office you stated that, to your knowledge, the Trust is not maintained under or pursuant to any collective bargaining agreement, the members of the Association are not a "control group" within the meaning of section 3(40)(B), and there is no rural electric cooperative in any way involved with the Trust.

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:

- (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 two or more 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 MEWA's from state regulation under section 514(b)(6)(A)(ii), he 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 MEWA's from state regulation.

It is, therefore, the Department's position that the preemption provisions of ERISA do not preclude state regulation of the Trust 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.

Enclosed for your information is a copy of Opinion 90-18A (issued July 2, 1990) which discusses the scope of the states' authority to regulate pursuant to section 514(b)(6)(A).

Because your request for an opinion was concerned primarily with the issue of whether or not the Trust is subject to the applicable regulatory authority of the State of Florida'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 the Trust is an employee welfare benefit plan within the meaning of section 3(1) 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.

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations

Enclosure