



July 27, 1992

Mr. Michael J. Angelini
New Jersey Department of
Insurance
CN 329
Trenton, New Jersey 08625-0329

92-16A
ERISA SECTION
3(40),
514(b)(6)

Dear Mr. Angelini:

This is in reply to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the New Jersey Tooling and Manufacturers Association Health Benefit Plan (a.k.a., the NJTMA Employee Benefits Association, Inc.) (the NJTMA Program) is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of title I of ERISA and, therefore, subject to applicable state insurance regulations.

You advise that the NJTMA Program provides group medical coverage to the employees of approximately ninety employers. In a telephone conversation with a representative of this Office, you further stated that, to your knowledge, the NJTMA Program was not established and is not maintained pursuant to any collective bargaining agreement, that the participating employers are not a control group, and that there is no rural electric cooperative or rural telephone cooperative association participating in the NJTMA Program.

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,

(ii) by a rural electric cooperative, or

(iii) by a rural telephone cooperative association.

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 NJTMA Program is a MEWA within the meaning of section 3(40). The NJTMA Program covers the employees of two or more separate, independent employers, is not maintained by either a rural electric cooperative or a rural telephone cooperative association, and is not maintained under or pursuant to any collective bargaining agreement.

Although section 514(a) of title I 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 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

(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 employee benefit plans which are 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 such MEWAs from state regulation. The Department, at this time has not changed its position. Accordingly, the Department is not providing such MEWAs exemptions from state regulation.

It is, therefore, the Department's position that the preemption provisions of ERISA do not preclude state regulation of the NJTMA Program 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, under current law, 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 advisory opinion was concerned primarily with the issue of whether or not the NJTMA Program is subject to the applicable regulatory authority of the State of New Jersey'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 NJTMA Program is an employee welfare benefit plan within the meaning of section 3(1) of that title.

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

Enclosure