

U.S. Department of Labor

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



March 11, 1996

96-05A
ERISA SECTION 3(40)(A)

Mr. Don Kelley
583 Spinnaker Drive, Suite 202
Ventura Harbor, California 93001

Dear Mr. Kelley:

This is in reply to your request that the Department of Labor reconsider or clarify Opinion 95-06A (issued May 18, 1995) to Mr. Tom Portier of the Louisiana Department of Insurance. In Opinion 95-06A, the Department held that the group health benefits program offered by Mid-Continent Medical Benefits Trust (MCMBT) is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), that such program is not an employee benefit plan covered under that title, and that section 514(a) of that title would not preempt state regulation of MCMBT, Profession Administration Group (PAG)¹, or "the pooled custodial account" maintained by these entities.

In your correspondence, you assert the program offered by MCMBT is not a MEWA because a joint custodial account maintained under an agreement between MCMBT and LFB Insurance and Reinsurance, International Division of La Fenix Boliviana S.A. De Seguros Y Reasegueros (La Fenix Boliviana) is not a pooled custodial account that is maintained by MCMBT. It is your position that the joint custodial account is maintained by La Fenix Boliviana as a reserve for future claims liabilities for the employee benefit plans it reinsures through its contracts with MCMBT. You indicate that MCMBT's signature is one of three needed to release funds from the joint custodial account. Further, you advise that no claims are paid out of the joint custodial account but are paid by MCMBT out of a separate reinsurance account into which plan contributions are deposited and that MCMBT transfers excess amounts from this reinsurance account to the joint custodial account to be held in reserve. It is your position that this reinsurance account is also an account maintained by La Fenix Boliviana. Finally, you advise that each employee benefit plan's contributions and claims payments are individually tracked and each plan is experience-rated on its own individual basis.

Section 3(40)(A) of Title I of ERISA generally defines the term "MEWA" to include any plan, fund, or arrangement that is established or maintained for the purpose of providing welfare benefits to the employees of two or more employers. Based on the information submitted, it is the Department's position that the joint custodial account and the reinsurance account are part of an arrangement established and maintained by MCMBT that is described in section 3(40)(A) that, therefore, constitutes a MEWA within the meaning of that section. The fact that each employer's payments or claims experience is separately "tracked" does not affect our position.

We see no basis in the information you submitted to alter the position taken in Opinion 95-06A that the program offered by MCMBT is not an employee welfare benefit plan for the purposes of Title I of ERISA and you stated in your request that you agreed with this position. Accordingly, although a state may not regulate a separate employee welfare benefit plan established or maintained by an employer that adopts the program offered by MCMBT to provide benefits to its employees, a state may still regulate MCMBT, PAG, the joint accounts described above, and

¹ PAG administers the group health benefit program offered by MCMBT.

the program of benefits that MCMBT offers to employers in that state, at least to the extent provided in section 514(b)(6)(A).

Finally, you ask that the Department "assume that all benefits of MCMBT administered plans are guaranteed by policies of reinsurance issued by La Fenix Boliviana" and "that La Fenix [Boliviana] is admitted as an insurer in American Samoa." As stated in Opinion 95-06A, the Department takes no position on whether La Fenix Boliviana is an entity qualified to conduct business in a state in which it issued reinsurance contracts to an employee benefit plan administered by MCMBT. Further, we note that the reinsurance contract between MCMBT and La Fenix Boliviana reinsures certain contracts specified in Schedule A of that reinsurance contract. Copies of those contracts identified in Schedule A have not been submitted to the Department and the Department, therefore, does not take any position whether the program of benefits offered by MCMBT is "fully insured" within the meaning of section 514(b)(6)(A)(i) of ERISA.

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,

Susan G. Lahne
Chief, Division of Coverage
Office of Regulations and Interpretations

cc: Mr. Tom Portier