

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 80-22A
3(1), 4(a)

APR 17 1980

Mr. James R. Deveney, II
Weinberg and Green
Nineteenth Floor
10 Light Street
Baltimore, Maryland 21202

Dear Mr. Deveney:

This is in reply to your letters of November 17, 1978, and May 29, 1979, requesting an advisory opinion regarding applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Maryland Classified Employees Association Insurance Trust (the Trust). The following is a summary of the material representations contained in both your letters and the documents submitted therewith.

You advise that the Trust is sponsored by the Maryland Classified Employees Association (MCEA), a state-wide organization which represents employees of the State of Maryland with regard to employment and working conditions. Membership in MCEA is voluntary and employees from various state agencies pay annual dues thereto. The Trust was created and is maintained by MCEA to enable MCEA members to obtain life insurance, sickness and accident insurance, hospitalization insurance, or other insurance or similar benefits under group insurance programs.

The Trust is administered by a Board of Trustees who are appointed by the president of MCEA for unspecified terms. The trustees serve on the Board without compensation and are subject to removal, at any time, by the president of MCEA. However, the president cannot remove more than one-half of the current trustees in any calendar year without the approval of the Executive Committee of MCEA. The president of MCEA also serves as a member of the Board of Trustees for the duration of his term. According to the trust agreement, all insurance policies obtained by the Trust, and the terms and conditions of the insurance coverage provided through the Trust are subject to any and all conditions which the Board of Trustees deems to be necessary. The trustees select and endorse those insurance plans which will be made available to MCEA members through the Trust. Insurance brokers present various plans to the trustees for their approval or disapproval. Upon selection of an insurance plan by the Board of Trustees, they approve the descriptive literature which will be sent to members of MCEA under the auspices of

MCEA. Insurance plans available to MCEA members include group term life insurance, whole life insurance, sickness, accident and disability insurance, cancer care, and hospitalization indemnity. All plans other than the group term life insurance plan utilize individual contracts in providing coverage and benefits to plan participants. Participation in the Trust for all MCEA members is voluntary. However, a MCEA member's eligibility to participate in the Trust, under the terms of a particular insurance policy, is determined by the Board of Trustees. If the application submitted by a MCEA member is accepted, the necessary insurance premiums are deducted from the wages of the participating member by his employer via payroll deductions, and these premiums are then forwarded to the insurance broker who in turn remits them to the insurance carrier. No funds are contributed by MCEA.

To the extent that excess premium payments are received by the insurance broker under the group term life insurance plan, retroactive rebates are remitted to the Trust, which are then accumulated by the trustees in a special reserve fund to be used to defray the cost of insurance in the future. In addition, the insurer under the group term life insurance plan pays administrative fees to the Trust in an amount equal to 6 percent of the total annual insurance premiums. The Trust, in turn, pays an administrative fee of 3 percent of these annual insurance premiums to MCEA for administrative and other recordkeeping services performed for the Trust by MCEA.

The trustees of the Trust have the power to promulgate rules and regulations regarding the operation and policies of the Trust, and are empowered to amend the Trust by written instrument in any manner which is not inconsistent with its stated purpose of affording insurance benefits to MCEA members. The trustees are required to make a semi-annual report to MCEA concerning the status of the Trust; however, MCEA has the authority at any time to request reports from the trustees regarding application of funds received from MCEA members and other information concerning the operation of the Trust. The Trust can be terminated by MCEA at any time.

In your letters you inquire whether benefits provided through the Trust amount to one or more employee welfare benefit plans, within the meaning of section 3(1) of ERISA, and are therefore subject under section 4(a) of ERISA to title I of ERISA, including the reporting and disclosure requirements set forth in part 1 of that title.

Section 3(1) of ERISA defines an employee welfare benefit plan as follows:

... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Department of Labor regulation 29 CFR 2510.3-1(j) clarifies the definition of the term "employee welfare benefit plan" for purposes of title I of ERISA by indicating that the term "employee welfare benefit plan" will not include group or group-type insurance programs offered by an insurer to employees or members of an employee organization if certain criteria are satisfied. As indicated therein, the criteria are that the arrangement must be one in which (1) no contributions are made by an employer or employee organization, (2) participation is voluntary, (3) the sole function of the employer or employee organization with respect to the program is, without endorsing the program, to permit the insurer to publicize the program and to collect and remit premiums to the insurer, and (4) the employer or employee organization receives no consideration in connection with the program other than reasonable compensation for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

In your November 17, 1978 letter, you suggest that the benefit programs provided through the Trust may be group or group-type insurance programs as described in regulation 2510.3-1(j). As previously noted, you have informed us that the Trust receives retroactive rebates attributable to excess premium payments resulting from experience-rating credits from the group term life insurance policy. You inquire as to whether these rebates, accumulated by the trustees in a special reserve fund, which are used to defray the cost of insurance in the future, amount to "consideration" within the meaning of regulation 2510.3-1(j)(4). As noted above, regulation 2510.3-1(j)(4) does not permit the receipt of consideration other than reasonable compensation for administrative services actually rendered. Since no portion of these retroactive rebates inures to the benefit of either the Trust or MCEA, it is the Department's opinion that the benefit programs provided through the Trust meet the conditions of regulation 2510.3-1(j)(4).

You also inquire whether the benefit programs provided through the Trust meet the conditions of regulation 2510.3-1(j)(3). As noted above, your letters indicate that the Trust was created by MCEA and is sponsored by MCEA, that the Trust may be terminated by MCEA at any time, that the Board of Trustees of the Trust is composed of the incumbent president of MCEA and several other trustees appointed by the president of MCEA, that the trustees select and endorse those insurance plans which are available to MCEA members, and that descriptive literature regarding the insurance programs is sent to members of MCEA under the auspices of MCEA. Under these circumstances, it appears that the MCEA's functions with respect to the insurance programs provided through the Trust are not limited, within the criterion set forth in regulation 2510.3-1(j)(3), to merely permitting insurers to publicize such programs, without endorsement, and to collecting and remitting premiums to the insurers. In our opinion, therefore, the insurance programs provided through the Trust are not group or group-type insurance programs described in regulation 29 CFR 2510.3-1(j).

You further inquire whether the Trust is to be considered the employee organization maintaining the insurance programs or whether the employee organization maintaining these programs is MCEA. The term "employee organization" is defined in section 3(4) of ERISA to mean "... any

labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.”

Regardless of whether the Trust might be deemed to be an employees' beneficiary association, we think that in view of the fact that the Trust was created by the MCEA, and in view of the control that the MCEA exercises over the Trust, the benefit programs provided through the Trust are maintained by the MCEA. Since as you recognize MCEA is clearly an employee organization within the meaning of section 4(a)(2) of ERISA and since the benefit programs offered through the Trust provide benefits described in section 3(1) of ERISA, it is the Department's opinion that these benefit programs amount to one or more employee welfare benefit plans within the meaning of section 3(1).

Under section 4(a) of ERISA, title I generally applies, except as provided in section 4(b), to any employee benefit plan if it is established or maintained by, among other entities, any employee organization representing employees engaged in commerce or in any industry affecting commerce. The phrase "industry or activity affecting commerce" is broadly defined in section 3(12) of ERISA. Of the exceptions from title I coverage listed in section 4(b), only section 4(b)(1) appears to be of potential relevance in this matter. Section 4(b)(1) provides that title I of ERISA does not apply to a plan which is a governmental plan, as defined in section 3(32).

The term "governmental plan" is defined in section 3(32) of ERISA as "... a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing...."

From the information submitted it appears that the Trust was established and is maintained by MCEA and is not maintained nor was it established by a governmental entity.

Thus, the Trust is an employee welfare benefit plan subject to title I of ERISA, including the reporting and disclosure provisions set forth in part 1 of that title.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs