

**U.S. Department of Labor**

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



Reply to the Attention of:  
Pension and Welfare Benefit Programs

OPINION NO. 82-10A  
Sec. 3(1), 3(4), 3(5)

FEB 1 1982

Mr. Emil J. Molin  
Deputy Commissioner  
Legal-Financial Services  
Department of Insurance  
State of Indiana  
509 State Office Building  
Indianapolis, Indiana 46204

Dear Mr. Molin:

This is in reply to your letter of August 24, 1981, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Minister's Group Trust (the Trust) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

The Trust was established October 30, 1979, by a trust agreement between Indiana National Bank as Trustee, Mid-America Trust Administrators, Inc. (Mid America) as Administrator, and Financial Business Insurance Group, Inc. (FBIG), for an entity also identified as Minister's Group Trust. The stated purpose of the Trust is to enable employers to arrange for the provision of certain benefits to employees and their dependents and beneficiaries. The benefits to be provided are health, major medical, and disability benefits. Under Article II of the trust agreement, the term "participating employer" is defined as "any employer, whether a corporation, an association, or charitable institution, which satisfied such requirements for participation as may be established by the Administrator and which adopts, in writing, this Agreement and agrees to be bound by the terms and conditions thereof as the same may from time to time be amended and modified." Under a separate undated agreement FBIG was named the exclusive agent for "marketing" the benefits to potential participating employers.

ERISA section 3(1) defines the term "employee welfare benefit plan" to include plans which provide health, major medical, and disability benefits. However, in order to be an employee welfare benefit plan, an entity must not only provide benefits identified in ERISA section 3(1), but also, among other criteria, be "established or maintained by an employer or by an employee organization, or by both ...."

The terms "employee organization" and "employer" are defined in ERISA sections 3(4) and 3(5) respectively as:

(4) the term "employee organization" means 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.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

The Department has taken the position that, in the absence of an employee organization, a multiple employer plan is formed where a cognizable, bona fide group or association of employers acting in the interests of its employer members establishes a benefit program for the employees of member employers. In contrast, where several unrelated employers, in establishing benefit programs for their employees, merely execute identically worded "trust agreements," "subscription agreements," or similar documents offered by a third party as a means to fund benefits, no single employee benefit plan can be recognized in the absence of any indication that such employers have formed a group or association to act in their interest in providing benefits. Instead, each benefit program provided by an individual employer for his employees, to the extent it meets the "welfare plan" definition in section 3(1) of ERISA, will be considered a separate employee welfare benefit plan. The entity providing benefits in such a situation is not itself an employee benefit plan but the provider of a funding vehicle to various single-employer plans.

From the information you submitted, the Department concludes that the Minister's Group Trust was neither established nor is maintained by an employee organization within the meaning of ERISA section 3(4). There is no indication that the employees covered under the Minister's Group Trust participate in any cognizable organization of employees to which that statutory definition may be applied.

Further, it is the Department's position that there is no employer within the meaning of ERISA section 3(5) which has established or is maintaining the Minister's Group Trust. No single employer employs all the participants in the Minister's Group Trust. Further, the trust agreement places no limit on what employers will satisfy the Administrator's qualifications under the definition of "participating employer" quoted above and become participating employers in the Minister's Group Trust. Nor is there any indication that there is a cognizable bona fide group or association of employers acting together in relation to the Minister's Group Trust.

Control over the Minister's Group Trust appears to rest in Mid America in its role as Administrator. There is no indication how Mid America was originally selected as Administrator. Mid America is independent of any control by the participating employers and the trust agreement does not provide a procedure for changing the Administrator. Further, the Administrator has the power to terminate the participation of any participating employers for any reason and may terminate those who fail to contribute or are not timely in making payments or fail to meet the underwriting standards the Administrator sets. Moreover, the Administrator has the power to construe the provisions of the trust agreement, such construction to be binding upon the participating employers. If a resigning trustee fails to appoint a successor, that power falls to the Administrator. The Administrator and trustee jointly may terminate the trust and the Administrator may amend or modify the trust agreement unilaterally unless at least half of the participating employers object in writing within 30 days of being mailed the notice of amendment or modification.

However, while Mid America thus appears to have ultimate control over the Minister's Group Trust, there is no indication that Mid America is acting on behalf of the adopting employers in relation to the Minister's Group Trust. Instead it appears that the adoptive employers have merely executed identically worded documents offered by an independent third party as a method to fund benefits. As a result, it is the Department's position that Mid America is also not the employer within the meaning of ERISA section 3(5) with regard to the Minister's Group Trust.

Therefore, the Department concludes, on the basis of the information you provided, that the Minister's Group Trust is not an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA. As noted above, this conclusion does not mean that individual employers who are members of the Minister's Group Trust have not established their own individual employee welfare benefit plans subject to ERISA, or that persons who act in fiduciary capacities with respect to those plans are not subject to the fiduciary obligations imposed by part 4 of title I of ERISA, 29 U.S.C. §1001 *et seq.*

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,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs