

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-33A  
Sec. 104(b)(4)

JUL 21 1982

Mr. Albert J. Yonke  
Yonke, Shackelford & Arnold, P.C.  
1710 Traders Bank Building  
1125 Grand Avenue  
Kansas City, Missouri 64106

Dear Mr. Yonke:

This is in response to your letter of September 10, 1981, on behalf of the Boards of Trustees of the Construction Industry Laborers Pension Fund and Construction Industry Laborers Welfare Fund (the Funds), concerning the obligation of the Boards of Trustees or plan administrator to provide copies of minutes of the Trustees' meetings under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an opinion that the Boards of Trustees of the Funds or the plan administrator are not required by section 104(b)(4) of ERISA or 29 CFR §2520.102-3(t)(2) to make available, upon written request of a participant, past participant or beneficiary, copies of minutes of the regular and/or special meetings of the Boards of Trustees or the Committee meetings of said Boards.

In support of your request you contend that the minutes of the Trustees' and Committee meetings do not constitute "other instruments under which the plan is established or operated" within the meaning of section 104(b)(4) or "plan documents" or "plan information" within the meaning of section 2520.102-3(t)(2). You indicate in your letter that a requirement to provide minutes of meetings to participants would create an impossible administrative burden and cost to the Funds.

Paragraph (t)(2) of section 2520.102-3, to which you refer in your letter, contains the "model" statement of ERISA rights designed for inclusion in summary plan descriptions. This "model" statement is not intended to create or broaden disclosure obligations beyond those specified in the Act and its regulations, but rather the "model" statement is intended to set forth in understandable language the general rights and protections afforded participants and beneficiaries under ERISA. In this regard, the "model" language referenced in your letter, i.e., "... all plan documents and other plan information ...", is intended merely to put participants and beneficiaries on notice that "plan information", e.g. the latest annual report, bargaining agreements, contracts and other instruments under which the plan is established or operated, in addition to "plan documents" is available upon written request.

Section 104(b)(4) of ERISA provides, in relevant part, that the plan "administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest annual report, any terminal report, the bargaining agreement, contract or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies ..." Because the minutes of regular and/or special meetings of the Boards of Trustees or the minutes of Committee meetings of the Boards do not necessarily constitute documents specifically delineated in section 104(b)(4) or "other instruments under which the plan is established or operated" within the meaning of section 104(b)(4), it is the view of the Department that such documents are not necessarily subject to the disclosure requirements of section 104(b)(4).<sup>1</sup> In addition, section 104(b)(4) does not require a plan administrator to furnish information to a person who, at the time he requests such information, is neither a participant nor a beneficiary of the plan.

It should be noted, however, that section 404(a)(1)(D) of ERISA requires a fiduciary to discharge his duties in accordance with the documents and instruments governing the plan insofar as they are consistent with the provisions of Title I of ERISA. Therefore, if any such documents or instruments, consistent with other provisions of Title I, require the furnishing or disclosure of the information about which you inquire in response to a request from a participant, past participant or beneficiary, Fund fiduciaries would be required to grant the request of that participant or beneficiary.

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

Sincerely,

Jeffrey N. Clayton  
Administrator of Pension and Welfare Benefit Programs

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<sup>1</sup> Of course, if the minutes of a trustees' meeting should, in fact, constitute an instrument under which the plan is established or operated, it would have to be furnished in accordance with the terms of section 104(b)(4). For example, the minutes of a trustees' meeting which establish a claims procedure or does any of the things described in section 402(b) and (c) of ERISA would have to be furnished in accordance with section 104(b)(4).