

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 83-4A  
Sec 3(1), 3(4)

JAN 19 1983

Mr. Gaston Wilkins  
President  
Baytown Mutual Benefit Association  
P.O. Box 3919  
Baytown, Texas 77520

Dear Mr. Wilkins:

This is in reply to your letter of June 18, 1982, requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Baytown Mutual Benefit Association (MBA) has an employee benefit plan covered by title I of ERISA.

You advise that MBA was established September 1, 1930, for the purpose of furnishing medical services and medicines to its members in case of sickness or non-industrial injury. "Primary members" in MBA are composed of employees and annuitants of the Humble Oil and Refining Company (now Exxon Company, U.S.A.) and its affiliates. These members have voting rights and are eligible to serve on the MBA Board of Directors (the Board). "Dependent members" in MBA are those dependents of primary members designated by the Board, who are in good standing at the time of the dependent's application. These members have no voting rights and are not eligible to serve on the Board. However, a dependent spouse who survives the primary member shall then have voting rights to participate in MBA elections.

At its inception, MBA was aided by the legal department of Humble Oil in formulating bylaws, rules of operation, etc., but the expenses are paid solely by its membership. MBA operates now as a supplement to insurance provided by Exxon to its employees. MBA has a clinic staffed by three doctors who provide their own nurses and work on a fee-per-patient basis. There is a complete laboratory, an x-ray department, and a pharmacy. These facilities are situated on land originally given by Humble in 1937. At present there are approximately 3,400 members including around 1,200 annuitants of Exxon.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" to include:

...any plan, fund, or program which has 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 (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).

Although MBA provides benefits among those identified in section 3(1) of ERISA, to be an employee welfare benefit plan, its program of benefits must, among other criteria, be established or maintained by an employer, an employee organization, or both. The Department of Labor (the Department) does not

consider that by its actions Humble (or its successor Exxon) has either established or maintained the program of benefits offered by MBA to its members. Further, MBA does not represent (and the Department sees no indication) that it is an employer within the meaning of section 3(5) of ERISA with regard to the program of benefits provided to its members. Accordingly, the issue of whether the MBA program of benefits is an employee welfare benefit plan covered by title I of ERISA revolves around whether MBA is an employee organization within the meaning of section 3(4) of ERISA.

Section 3(4) of ERISA defines the term “employee organization” to include:

... 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.

MBA is not an “employee organization” within the meaning of the first part of this definition (before the semi-colon). There is no indication that MBA exists for the purpose of dealing with Humble or Exxon concerning its program of benefits or other matters incidental to employment relationships.

However, MBA is an employees’ beneficiary association organized for the purpose of establishing an employee benefit plan. Although the term “employees’ beneficiary association” is not defined in ERISA, the Department has applied the criteria it developed in construing the same term for the purposes of ERISA’s predecessor, the Welfare and Pension Plans Disclosure Act. Those criteria were stated in Opinion 79-19A (issued March 15, 1979, copy enclosed). MBA meets these criteria.

Therefore, based on your representations, it is the position of the Department that the program of benefits offered to its members by MBA is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

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

You also ask the effect under section 514 of ERISA of an opinion dated March 18, 1982, from the Office of the Attorney General of the State of Texas. Since your request on this issue did not include sufficient information required under section 6.02(b) of ERISA Procedure 76-1 for the Department to issue an advisory opinion, we hope the following information will be helpful.

In pertinent part, section 514 of ERISA provides:

SEC. 514(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)....

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(b)(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other

insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies ....

Section 514(a) of ERISA generally preempts any state law which relates to an employee benefit plan covered under title I of ERISA. While section 514(b)(2)(A) preserves state laws regulating the insurance, banking, or securities industries, section 514(b)(2)(B) provides that an employee benefit plan may not be deemed to be, among other things, an insurance company or other insurer for the purposes of a state law purporting to regulate these industries.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs

Enclosure