

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO.83-36A  
Sec. 3(1), 3(40), 3(4), 3(32)

JUL 5 1983

Mr. Robert C. Kelly  
Kelly, Haus and Katz  
302 East Washington Avenue  
Suite 202  
Madison, Wisconsin 53703

Dear Mr. Kelly:

This is in response to your correspondence on behalf of the Wisconsin Education Association Insurance Trust (the Trust) concerning the status of the Trust under the provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Your most recent correspondence on behalf of the Trust was May 13, 1983. Specifically, you request the Department of Labor (the Department) to issue an advisory opinion stating whether the Trust is an employee welfare benefit plan covered by title I of ERISA.

From your correspondence it appears the Trust was established on March 13, 1970, pursuant to an agreement and declaration of trust between the Wisconsin Education Association, Inc. (WEA), a statewide organization of teachers affiliated with the National Education (NEA), and the trustees of the Trust. The Trust was not set up or administered to comply with the Labor Management Relations Act, 1947. Successors of the original trustees were appointed solely by WEA until recent amendment of the Trust document gave the Board of Directors of each NEA-affiliated state association having members participating in the Trust the right to appoint trustees under certain specified conditions. Benefits available to participants and beneficiaries from the Trust include health, dental, long-term disability, hospital, and life insurance benefits. Not all participants are covered by the full range of benefits available. In a number of school districts, benefits are provided through contributions by the school district in accordance with collective bargaining agreements. Apparently, other school districts merely forward employee contributions to the Trust using a collectively bargained payroll deduction system. Participating members may also forward contributions to the Trust on their own behalf. State or local associations affiliated with NEA located in Idaho, North Dakota, South Dakota, Wyoming, and Montana participate or are being considered for participation in the Trust.

The term "employee welfare benefit plan" is defined in section 3(1) of ERISA to mean:

... 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).

The term “employee organization” is defined in section 3(4) of ERISA to include any labor union. From your submission it appears that the WEA is a labor union and, therefore, an employee organization within the meaning of section 3(4) of title I of ERISA with respect to WEA membership. Each state or local association affiliated with the NEA and located outside Wisconsin also appears to be a labor union and, thus, an employee organization with respect to its members within the meaning of section 3(4) of title I of ERISA.

Based on your submissions and representations, the Department views the benefit arrangement you describe as being for the purpose of providing benefits included in the definition of an employee welfare benefit plan in section 3(1) of title I of ERISA and as established and maintained by one or more employee organizations for members because you represent that these organizations have full control over the benefit arrangement. Thus, we believe that WEA and the state and local associations affiliated with NEA have an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA. If our assumptions concerning control of the benefit arrangement are not correct, the Department must reconsider its views concerning the existence of an employee welfare benefit plan in the factual situation stated above.

Although more than one employer contributes to the Trust for the purpose of providing welfare benefits, it is not a multiple employer welfare arrangement (MEWA) described in section 3(40) of title I of ERISA, recently added by Act of January 14, 1983, Pub. L. 97-473, section 302(a), because section 3(40)(A)(i) of ERISA excludes from the MEWA definition any plan or other arrangement which is established or maintained “under or pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements ....”

The Department has also considered whether the Trust may be a governmental plan within the meaning of section 3(32) of title I of ERISA and, thus, whether it is excluded from title I coverage by section 4(b)(1) of title I of ERISA. Section 3(32) of title I of ERISA defines the term “governmental plan,” in pertinent part, 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.” Although the Department generally views school districts both in and outside Wisconsin as agencies, instrumentalities, or political subdivisions of government, we conclude that there is no governmental plan in the factual situation you present because no school district appoints any trustee or in any other manner administers or controls the benefit arrangement. Moreover, as indicated above, not all school districts make contributions on behalf of their employees who participate in the benefit arrangement you describe.

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