

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-50A
Sec. 3(1), 3(4)

OCT 3 1983

Mr. Mark S. Lewis
Underhill & Associates
Attorneys at Law
214 Third Avenue, North
Nashville, Tennessee 37201

Dear Mr. Lewis:

This is in reply to your letters of May 11 and July 23, 1982, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Religious Employees Health Care Trust (the Trust) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and therefore is covered by title I of ERISA.

From the information submitted with your request, it appears that the Trust was restated on May 20, 1981, pursuant to a trust agreement between the Religious Employees Association (REA) and the Nashville City Bank and Trust Company. That trust agreement refers to a prior trust agreement between Garrett-Street & Associates, Inc., and the First National Bank of Mobile. The May 20, 1981 trust agreement states that the Trust was created for the purpose of providing a comprehensive hospital, surgical, and medical care program to certain employees or members of REA. The Trust also provides life insurance and accidental death and dismemberment benefits.

Mr. William L. Underhill of your firm filed a certificate of incorporation for REA on May 21, 1981, as incorporator. Article III, Section I of the REA By-Laws provides that any adult citizen primarily engaged as a religious employee may be a member of REA whether the individual is a minister, preacher, instructor of an organized religious group, or any person who principally derives his income from a religious organization affiliated with a recognized religious group and who satisfies other conditions prescribed by the Board of Directors. The Board of Directors is elected by the Board of Governors who were originally appointed by the incorporator. Vacancies on the Board of Directors due to death, reorganization, or otherwise may be filled for the remainder of the unexpired term by the Board of Governors. The certificate of incorporation filed by the incorporator on May 21, 1981, specifically states that members of REA have no voting rights. The Board of Directors controls the affairs of REA. In the event of a deadlock vote by the Board of Directors, the deciding vote is to be cast by the Registered Agent. Article 1, Section 2 of the REA By-Laws names Mr. Underhill as Registered Agent until otherwise ordered by the Board of Directors.

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

. . . 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, ... (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 the Trust provides benefits among those described in section 3(1) of title I of ERISA, in order to be an employee welfare benefit plan, it must, among other criteria, be established or maintained by an employer or an employee organization, or by both.

The terms "employee organization" and "employer" are defined in section 3(4) and 3(5) of title I of ERISA, 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.

Because there is no indication that REA is an employer within the meaning of section 3(5) of title I of ERISA with regard to its members concerning the Trust, this letter will examine only whether REA is an employee organization within the meaning of section 3(4) of title I of ERISA.

There is no indication that REA deals with employers concerning either an employee benefit plan or other matters incidental to employment. In addition, because members of REA have no voting rights, they can not be said to "participate" in REA other than to receive promised benefits from the Trust. Further, REA is not an "employees' beneficiary association." Although the term "employees' beneficiary association" is not defined in ERISA, the Department of Labor (the Department) has previously indicated that it will apply the definition of the same term developed under the Welfare and Pension Plans Disclosure Act which preceded and was repealed by ERISA. See Opinion Letter 81-61A (dated July 21, 1981, copy enclosed). A portion of that definition is that membership must be conditioned on employment status -- for example, if membership is limited to the employees of a certain employer. Limiting membership to religious employees is not sufficient to meet the definition. Thus, REA is not an "employee organization" under section 3(4), even though it has some of the characteristics of an employees' beneficiary association -- it has a formal organization and it was organized in part for the purpose of providing welfare benefits.

Therefore, it is the position of the Department that the Religious Employees Health Care Trust is not an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and is not covered by title I of ERISA, because it was not established or maintained by an employer or employee organization, or by both. However, if an employer within the meaning of section 3(5) of title I of ERISA adopts the Trust in order to provide benefits to its employees, such an employer would be considered to have established or maintained a separate, single-employer employee welfare benefit plan within the meaning of section 3(1) of ERISA. Further such a plan would be covered by title I of ERISA unless otherwise excluded.

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,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs

Enclosure