

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



AUG 18 1989

ERISA OPINION 89-20A
Sec. 3(1)

Mr. Ernest P. Ritchey
Vice President
Federal Employee Association
1747 Citadel Plaza, #101
San Antonio, Texas 78209

Dear Mr. Ritchey:

This is in reply to your letter requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have inquired whether the FEA/GEA Dental Health Care Plan (the Plan) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that the Plan was adopted by the Federal Employees Association d/b/a FEA/GEA (FEA) effective July 1, 1980, to provide a dental program for its members. Participation in the Plan is limited to any member of FEA and their dependents. The Plan is funded by monthly contributions from participating members. It is administered by a committee appointed by the Board of Directors of FEA.

FEA is a Texas corporation which, according to Article Four of its Articles of Incorporation, is organized for the purpose of organizing Federal employees of local communities into a single body for the purpose of promoting their common social and economic positions and the enhancement of the image of the professional Federal employee. The members of FEA elect annually a board of trustees which selects the officers of FEA.

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, 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).

Although the Plan provides benefits among those identified in section 3(1), to be an employee welfare benefit plan a plan must also, among other criteria, be established or maintained by an employer, an employee organization, or both. From the information you submitted there is no indication that an employer is in any way involved in the establishment or maintenance of the Plan. Accordingly the only issue appears to be whether FEA is an employee organization.

Section 3(4) of title I 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.

There is no indication in the information you submitted to indicate that FEA exists for the purpose of dealing with an employer or employers. Therefore FEA would not be an employee organization within the meaning of the first part of the definition contained in section 3(4), i.e., before the semi-colon. However, as reflected above, the term "employee organization" also includes, i.e., after the semi-colon, any employees' beneficiary association organized for the purpose, in whole or in part, of establishing an employee benefit plan.

While the term "employees' beneficiary association" is not further defined in title I of ERISA, the Department applies the criteria it developed for the same term under the Welfare and Pension Plans Disclosure Act (WPPDA) in determining whether a particular association or organization is an "employees' beneficiary association," within the meaning of ERISA section 3(4). Therefore, in order to conclude that an association or organization is an "employees' beneficiary association" within the meaning of ERISA section 3(4), the Department must find that:

- 1) membership in the association is conditioned on employment status -- for example, membership is limited to employees of a certain employer or union;
- 2) the association has a formal organization, with officers, by-laws or other indications of formality;
- 3) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan, and

- 4) the association generally does not deal with employers.

Based on the information submitted, it appears that FEA constitutes an employees' beneficiary association under the Department's criteria and, therefore, an "employee organization" within the meaning of section 3(4) of ERISA. Accordingly, because the Plan provides benefits within the meaning of ERISA section 3(1) and is maintained by an employee organization within the meaning of ERISA section 3(4), it is the view of the Department that the Plan is an "employee welfare benefit plan", within the meaning of section 3(1), subject to the provisions of title I of ERISA.

We note that, ERISA section 4(b)(1) excludes "governmental plans" from coverage under title I.¹ However, based on the information provided, there is no indication that any governmental entity is involved in any way with the establishment or maintenance of the Plan. Accordingly, the Plan would not, in the view of the Department, constitute a governmental plan for purposes the exclusion from title I coverage under ERISA section 4(b)(1).

Finally, nothing herein should be interpreted as indicating whether or not the Plan is in compliance with the provisions of title I of ERISA.

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,

Robert J. Doyle
Director of Regulations and Interpretations

¹ The term "governmental plan" is defined in ERISA section 3(32) to mean "... 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...."