

**U.S. Department of Labor**

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



DEC 12 1989

89-33A  
Sec. 3(40), 514(b)(6)

Mr. L. J. Darter, III  
Georgia Insurance Commission  
Seventh Floor, West Tower  
Floyd Building  
2 Martin Luther King, Jr., Drive  
Atlanta, Georgia 30334

Dear Mr. Darter:

This is in reply to your request for an advisory opinion regarding the applicability of title I or the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the National Business Association Trust (NBAT) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and whether NBAT is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of that title.

You advise that NBAT was created pursuant to a trust agreement dated July 24, 1987, between the Coca-Cola Bottling Co. of S.E. Missouri and other unnamed corporations as the Company and Charles Sander as Trustee. The trust agreement states that it is an amendment of and successor to the Mid America Soft Drink Bottling Trust. The trust agreement states that the Company intends to adopt health care and welfare plans for the benefit of its employees and that it provides for the creation of a MEWA within the meaning of section 3(40) of title I of ERISA. The term "Company" is defined to include all employers which thereafter participate in NBAT. There are approximately 68 employers utilizing NBAT to provide medical coverage to their employees. In a telephone conversation with John Keene of this Office, you also stated that the employers utilizing NBAT to provide benefits to their employees do not constitute a controlled group and that NBAT is not maintained pursuant to any collectively bargained agreement.

Section 3(40)(A) of title I of ERISA defines the term "MEWA" to include:

... an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained --

- (i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or
- (ii) by a rural electric cooperative.

Based upon the information you submitted, it is the position of the Department of Labor (the Department) that NBAT is a MEWA within the meaning of section 3(40). NBAT covers the employees of more than two separate, independent employers; is not maintained by a rural electric cooperative; and is not maintained under or pursuant to any collective bargaining agreement.

Although section 514(a) of ERISA provides that any state law or regulation which relates to an employee benefit plan covered by ERISA is preempted, P.L. 97-473 amended section 514(b) of title I of ERISA to provide:

(6)(A) Notwithstanding any other provision of this section -- (i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides --

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

Although section 514(b)(6)(B) provides that the Secretary of Labor may prescribe regulations under which the Department may exempt MEWAs from state regulation under section 514(b)(6)(A)(ii), the Department has previously stated that it did not see the need to prescribe regulations under section 514(b)(6)(B) to exempt MEWAs from state regulation. The

Department, at this time, has not changed its position. Accordingly, the Department is not providing MEWAs exemptions under section 514(b)(6)(B) from state regulation.

It is, therefore, the Department's position that NBAT is subject to state regulation at least to the extent provided in section 514(b)(6)(A), regardless of whether it is an employee benefit plan covered by title I of ERISA, because it is a MEWA within the meaning of section 3(40) of that title.

Because your request for an advisory opinion was concerned primarily with the issue of whether or not NBAT is subject to the applicable regulatory authority of the State of Georgia's insurance laws or is saved from such authority under the general preemption provision of section 514(a) of title I of ERISA, and because of the opinion above, we have determined it is not necessary at this time to render an opinion as to whether NBAT is an employee welfare benefit plan within the meaning of section 3(1) of that title.

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

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations