

U.S. Department of Labor

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



MAY 14 1990

ERISA OPINION 90-15A
Sec. 3(40), 514(b)

Ms. Sandra Milburn
Texas State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Dear Ms. Milburn:

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

You advise that the CARE Trust was created pursuant to a trust agreement dated December 1, 1989, between the Continental Association of Resolute Employers (the Association) and other unnamed Participating Employers as the Trustor and the Association as Trustee. The trust agreement states that the Trustor intends to adopt health care and welfare plans for the benefit of its employees and provides for the creation of a MEWA within the meaning of section 3(40) of title I of ERISA. The term "Trustor" is defined to include all employers which thereafter participate in the Care Trust. There are seven sub-trusts - the Construction Industry Trust, the Service Industry Trust, the Wholesale Industry Trust, the Professional Industry Trust, the Retail Industry Trust, the Manufacturing Industry Trust, and the Agriculture Industry Trust - for the CARE Trust. Participation in the CARE Trust is limited to employers of members of the Association. With regard to membership in the Association Section 11, Subsection 6 of the By-Laws, Rules and Regulations of the Association provides, in pertinent part:

B. Regular memberships shall be limited to three (3) in number, and shall consist of those persons elected thereto by the Board of Directors. Each Regular membership shall entitle the holder thereof of one (1) vote at all meetings of this corporation.

C. NON-VOTING MEMBERSHIPS

1. Member Firms
2. Sponsoring Organizations
3. Individual Memberships
4. Honorary Memberships
5. Supporting Memberships

In a telephone conversation with a representative of this Office, you also stated that the employers utilizing the CARE Trust to provide benefits to their employees do not constitute a "control group" within the meaning of section 3(40)(B) and that CARE 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.

Section 3(40)(B) provides in pertinent part:

For purposes of this paragraph --

- (i) two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group,
- (ii) the term "control group" means a group of trades or businesses under common control,....

Based upon the information you submitted, it is the position of the Department of Labor (the Department) that the CARE Trust is a MEWA within the meaning of section 3(40). The CARE Trust 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, section 514(b) of title I of ERISA provides:

(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 the CARE Trust 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 the CARE Trust is subject to the applicable regulatory authority of the State of Texas'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 the CARE Trust 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