

**U.S. Department of Labor**

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



AUG 2 1990

ERISA OPINION 90-26A  
Sec. 3(40), 514(b)

Mr. Gregory Reynolds  
Financial Regulation Division  
Virginia Bureau of Insurance  
Box 1157  
Richmond, Virginia 23209

Dear Mr. Reynolds:

This is in reply to your request for an advisory opinion concerning whether the Virginia Automobile Dealers Association Employee Welfare Benefits Plan (the VADA Program) is a multiple employer welfare arrangement within the meaning of section 3(40) of title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You advise that the VADA Program was created pursuant to a trust agreement dated August 30, 1948, between the Automotive Trade Association of Virginia, subsequently the Virginia Automobile Dealers Association, Inc. (VADA), and various employer/members of VADA and 21 individuals named as Trustees. The trust agreement has been subsequently amended from time to time. Under Article I, Section I of the undated amended trust agreement you provided, any member of VADA who is a franchised motor vehicle dealer doing business in Virginia and employing 10 or more employees may subscribe to the VADA Program. Under Article III, section I of VADA's By-laws as amended February 16, 1989, there are four classes of membership in VADA as follows:

Sec. I.

**MEMBERSHIP**

Membership in this Association shall be classified as Franchised, Allied, Used Car and Honorary.

(1) **FRANCHISED MEMBERSHIP**

Except as hereinafter set forth, persons, firms, or corporations registered licensed or enfranchised to sell new automobile and truck type vehicles in the State of Virginia are eligible for Franchised membership.

(2) **ALLIED MEMBERSHIP**

Any firm or corporation engaged in business in the State actively identified with the motor vehicle business, shall be eligible for Allied membership upon Board approval. Such membership shall be without vote.

(3) **USED CAR MEMBERSHIP**

Any firm or corporation licensed to sell used cars in the State of Virginia is eligible for Used Car membership upon Board approval. Such membership shall be without vote.

(4) HONORARY MEMBERSHIP

Any past or ex-franchised dealer is eligible for Honorary membership upon Board approval. Such membership shall be without vote.

In a telephone conversation with a representative of this Office, you also stated that the employers utilizing the VADA Program to provide benefits to their employees do not constitute a "control group" within the meaning of section 3(40)(B) and that the VADA Program is not maintained pursuant to any collectively bargained agreement.

Section 3(40) 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 VADA Program is a MEWA within the meaning of section 3(40). The VADA Program 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)(6) of title I of ERISA provides:

(6)(A) Notwithstanding any other provisions 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 VADA Program 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. Further if the VADA Program is not an employee benefit plan itself, the fact that single-employer welfare benefit plans established by member dealers of VADA utilize the VADA Program to provide benefits to their employees would not preclude state regulation of the VADA Program because it is a MEWA.

In your request you also raise a number of questions on the issue of when a state insurance law regulating MEWAs would be inconsistent with title I of ERISA. We believe that Opinion 90-18A (issued July 2, 1990, copy enclosed) addresses these issues. If you have additional questions, please get in touch with this office.

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

Enclosure