

U.S. Department of Labor

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



AUG 3 1990

ERISA OPINION 90-28A
Sec. 3(40), 514(b)

Mr. Chuck Huff
Investigator
Georgia Insurance Commissioner
Seventh Floor, West Tower
Floyd Building
2 Martin Luther King, Jr., Drive
Atlanta, Georgia 30334

Dear Mr. Huff:

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 Employee Benefit Trust (the Trust) a/k/a Georgia Health Care Association Trust is an employee welfare benefit plan covered under title I of ERISA, whether the Trust is a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40) of that title, and whether the State of Georgia is preempted under section 514 of that title from regulating the Trust.

You advise that the Trust is administered and marketed by Hagan and Associates, Inc., of Roswell, Georgia. You advise that the Trust was established effective November 1, 1977, by the Georgia Health Care Association (GHCA). In a letter dated March 27, 1984, to GHCA, Mr. Robert W. Hagan offers to purchase the Georgia Health Care Association Group Trust, and in an agreement dated May 1, 1984, Hagan and Associates agreed to assume all debts and management of the Group Trust. In a letter dated November 11, 1985, from Mr. Hagan to the Executive Vice President of GHCA, Mr. Hagan refers to no longer having GHCA sponsor the Trust. The restated plan documents for the Employee Benefit Trust, dated January 1, 1987, make no reference to the GHCA. In 1989, a Form 5500 was filed for the year 1988 for the Georgia Health Care Association Group Trust, signed by Robert W. Hagan, Plan Administrator.

Under the restated plan document, the Trust is a self-funded entity which maintains health care coverage for its Members, employees (and their dependents) of Members, and its employees. The term "Member" is defined in Article II, Section 12 as "an employer, whether a corporation, partnership or sole proprietorship, which operates and/or manages a licensed health care facility." The term "Participating Employer" is defined in Article II, Section 15 to include corporations affiliated with an employer that is or manages a licensed health care facility if the affiliated corporation is approved for membership by the Trustees and if it provides health-related services.

In a telephone conversation with a representative of this Office, you stated that, to your knowledge, the Trust was not established pursuant to or under any collectively bargained agreements, the Trust was not established by a rural electric cooperative, and the participating employers do not constitute a "control group" described in section 3(40)(B) of title I of ERISA.

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 Trust is a MEWA within the meaning of section 3(40). The Trust covers the employees of two or more 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 such regulations. The Department, at this time, has not changed its position. Accordingly, the Department is not exempting MEWAs from state regulation.

It is, therefore, the Department's position that the 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.

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.

Because your request for an opinion was concerned primarily with the issue of whether or not the Trust 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 the Trust is an employee welfare benefit plan within the meaning of section 3(1) of that title.

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations