

October 30, 1975

Dear :

This letter is in belated reply to your inquiry of last December regarding possible preemption of a law of the State of governing employee welfare trust funds. The questions raised are both difficult and important which is why we have been slow in responding. We have now concluded, however, that except for section 48.502.040, the substantive provisions of Chapter 48.52 of the (State) Revised Code have been preempted by the Employee Retirement Income Security Act of 1974 (ERISA). The reasons for our view are set forth below.

Section 514(a) of ERISA provides that Titles I and IV supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan established or maintained by an employer or employee organization engaged in commerce or in any industry or activity affecting commerce, with specified exceptions. The exceptions preserve State laws which regulate governmental plans, church plans, plans maintained solely for the purpose of complying with applicable workmen's or unemployment compensation or disability insurance laws, plans maintained outside the United States primarily for nonresidents, and excess benefit plans. Paragraph 514(b) specifies that Title I of the Act shall not be deemed to relieve or exempt any person from any State law governing insurance, banking or securities.

The (State) law is a law governing employee benefit plans insofar as its coverage extends to any fund established by one or more employers to provide employees, their families or dependents with medical, hospital, disability, death, retirement or annuity benefits. A fund for these purposes is an employee benefit plan; it follows therefore that State regulation of such a fund would be preempted.

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In general we reach a different conclusion about section 48.52.040 because it regulates insurers and health care contractors, and these are not normally employee benefit plans. A health care contractor is defined by 48.44.010 as a suitably sponsored corporation, cooperative group or association (e.g. by a group of licensed doctors or hospitals) which provides prepaid health care. An insurer is defined by 48.01.50 as a person engaged in the business of making contracts of insurance. Insofar as these organizations are not employee benefit plans, State laws regulating them would not be preempted. Moreover, State laws regulating insurance companies are specifically saved from preemption by section 514 (b) (2) of ERISA.

Sincerely,