

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216



August 16, 1977

Mr. Michael Antin
Cruikshank and Antin
Wilshire-Sam Vincente
Plaza, Suite 1040
8383 Wilshire Boulevard
Beverly Hills, California 90211

OPINION 77-56 A

3(2)

Dear Mr. Antin:

This is in reply to your letter concerning the Employee Retirement Income Security Act of 1974 (ERISA). We regret that the volume of correspondence has resulted in a delay in responding.

You state that the Horsemen's Benevolent and Protective Association (HBPA) (California Division) is an association composed of all the thoroughbred racehorse owners and trainers in California. HBPA receives one per cent of the purse money won at the California race-tracks with which it is involved and performs various functions including overseeing stable and race conditions, maintaining personnel relations, and similar duties which generally benefit employees at the racetracks. HBPA has adopted the Horsemen's Benevolent and Protective Association Employees' Pension Plan (the Plan) for the benefit of the "backstretch employees" such as grooms, trainers, and exercise boys. Technically, HBPA is not the employer of these backstretch employees, but rather the trainers act as employers and the owners hire the trainers. You question whether the Plan is subject to the provisions of Title I of ERISA and whether section 410 prohibits the HBPA from indemnifying the Plan's trustees.

The Department of Labor has adopted an advisory opinion procedure (ERISA Procedure 76-1, copy enclosed) which describes the general procedures for issuing information letters and advisory opinions under ERISA. Pursuant to ERISA Procedure 76-1, this letter is to have the effect of an advisory opinion.

Section 3(2) of ERISA defines the term "pension plan" to include any program established or maintained by an employer or by an employee organization to the extent that it provides retirement income to employees or results in deferral of income for periods extending to the termination of covered employment or beyond. Section 3(5) defines the term "employer" as any person acting

directly as an employer, or indirectly in the interest of an employer in relation to an employee benefit plan and includes a group or association of employers acting for an employer in such capacity.

Based on the information provided, it is concluded that the HBPA is acting indirectly in the interest of an employer in relation to an employee benefit plan within the meaning of section 3(5). Therefore, for purposes of Title I, the Plan is a "pension plan" within the meaning of section 3(2) of ERISA and, pursuant to section 4(a), is subject to the provisions of Title I.

You also question whether section 410 prohibits the HBPA from indemnifying the Plan's trustees. You suggest that there is doubt because the Internal Revenue Service (IRS) has ruled that the HBPA is not the employer of the covered participants, and therefore, that the Plan is not an employee benefit plan for purposes of Title II.

There is no violation of section 410 if the indemnification complies with the guidelines set forth in Interpretive Bulletin 75-4, a copy of which is enclosed. For your further guidance, we are also enclosing a copy of a related press release issued by the Department.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosures