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

FEB 15 1978

Mr. William I. Aronwald
National Counsel
American Guild of Variety Artists
600 Madison Avenue
New York, New York 10022

OPINION 78-1 A

3(1)

Dear Mr. Aronwald:

This is in partial response to your letters of November 23, 1977, and December 7, 1977, regarding the application of the Employee Retirement Income Security Act Of 1974 (ERISA). In your letters, you requested an opinion that the American Guild of Variety Artists (AGVA) Sick and Relief Fund (the Fund) is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA or, if the Fund is such an employee welfare benefit plan, that the Department of Labor grant the Fund an exemption from sections 406 and 407 of ERISA.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" as " . . . any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

The fact that this plan supplements benefits provided through another employee welfare benefit plan is not relevant to a determination of the Fund's status under ERISA. Neither is the tax status of the Fund relevant to the question of the Fund's coverage. You represent that the Fund provides varied financial assistance to financially distressed and destitute members or former members for, among other things, medical expenses not covered by the AGVA Welfare Trust Fund. If the Fund provides benefits specified in section 3(1) to members and former members and if it was established or is maintained by an employee organization as defined by ERISA, it would be an employee welfare benefit plan. (The term "employee organization" is defined in section 3(4) as " . . . any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.")

From the information you submitted, it is the position of the Department of Labor that the Fund is an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Your request for an exemption from sections 406 and 407 of ERISA will, accordingly, be processed and handled separately.

This letter constitutes an advisory opinion under ERISA Procedure 76—1. Accordingly, this letter is issued subject to the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
 and Exceptions