

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



MAR 12 1979

Mr. S. Del Fuston
Law Offices
609 Maclellan Building
Chattanooga, Tennessee 37402

OPINION 79-16 A

3(1)

Dear Mr. Fuston:

This is in reply to your letter of November 15, 1978, requesting an advisory opinion concerning the Tri-State Carpenters District Council Death Benefit Fund (the Fund). Specifically, your inquiry concerns whether the Fund is an employee welfare benefit plan covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You represent that the Fund will be administered and maintained by the Tri-State Carpenters District Council. Union members who choose to become Fund members pay \$5.00 into the Fund in order to begin voluntary participation. When a member of the Fund dies, each member is assessed \$3.00, and the named beneficiary of the deceased member receives \$2.65 multiplied by the number of participating members. You estimate that 1,000 persons from among those eligible to participate will choose to become participating members of the Fund.

Documents establishing the Fund, which were approved by Tri-State Carpenters District Council on July 17, 1978, provide that members of Local Unions 74, 654, 1608, 2529, 2461, 2470, and 2490 are eligible to participate in the Fund. The documents also provide that reserves of the Fund are used to pay death benefits for deceased participating members only if the Fund becomes sufficient to pay four such death benefit claims. In such a case, one claim shall be paid from the reserves of the Fund. Members are not assessed for a claim paid from reserves of the Fund but are notified that the claim has been paid. Also in accordance with the documents, if termination of the Fund by resolution of the District Council occurs, Fund monies in excess of the amount required to pay current benefits shall be returned to participants on a per capita basis.

ERISA section 3(1) defines the term "employee welfare benefit plan" as ". . . any plan, fund, or program . . . 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 . . . benefits in the event of . . . death"

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Regulations issued by the Department of Labor August 15, 1975, clarify the definition of the term "employee welfare benefit plan." Regulation section 2510.3-1(g) of these regulations provides that the term "employee welfare benefit plan" does not include ". . . a program under which contributions are made to provide remembrances such as flowers, an obituary notice in a newspaper or a small gift on occasions such as the sickness, hospitalization, death or termination of employment of employees, or members of an employee organization, or members of their families."

The Fund was established and is to be maintained by an employee organization for the purpose of providing death benefits to participants and beneficiaries, which are among the benefits described in ERISA section 3(1). Further, it appears to the Department that, at the present time, the Fund is not merely a remembrance fund as described in regulation section 2510.3-1(g) since the Fund is expected to provide benefits totalling approximately \$2,650.00 per deceased member rather than providing for a "small gift" on the occasion of death as the regulation describes. The Fund, therefore, appears to be an employee welfare benefit plan within the meaning of ERISA section 3(1).

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

Employee welfare benefit plans must comply with all applicable requirements of parts 1, 4, and 5 of ERISA title I. Part 1 pertains to reporting and disclosure. Part 4 pertains to fiduciary requirements. Part 5 pertains to coercive interference, interference with rights under ERISA, and claims procedures. Information on ERISA requirements is enclosed.

Sincerely,

Ian D. Lanoff
 Administrator
 of Pension and Welfare
 Benefit Programs

Enclosure