

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



MAR 26 1979

OPINION 79-22

Mr. Charles Beebe	3 (1)
President	3 (4)
V.I.B.A. Insurance Administrators, Inc.	3 (5)
409 Alberto Way, Suite C	
Los Gatos, California 95030	

Dear Mr. Beebe:

This is in response to your letter of March 23, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the V.I.B.A. Trust constitutes an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that the V.I.B.A. Trust is an agreement between V.I.B.A. Insurance Administrators, Inc. (the Corporation), a trustee and subscribing employer trustors. V.I.B.A. Trust was established under provisions of the Insurance Code of the State of California for the purpose of providing group insurance to the subscribing employers. Benefits provided are group life, disability, hospitalization, surgical and medical insurance. Although there are three trust documents respectively for employers engaged in retail, service and manufacturing "industries," you represent that the V.I.B.A. Trust was not established by and is not maintained by an employer, an employee organization, or both. The Corporation is the designated administrator of V.I.B.A. Trust and the sole broker-of-record under the trust documents. The trustee, according to the trust documents, serves until death or incapacity unless he or she voluntarily terminates his or her services. The rights and benefits of subscribing employers and their participating employees are limited to those provided in the insurance policy or policies issued to the trustee.

Section 3(1) of ERISA provides:

Sec. 3 For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean 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,

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(A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, 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).

You represent that, although V.I.B.A. Trust's program of benefits provides the types of benefits which may be provided by an employee welfare benefit plan, V.I.B.A. Trust does not satisfy the statutory definition of such a plan because it was not established nor is it maintained by an employer, an employee organization, or both, as those terms are defined in ERISA.

Section 3(4) of ERISA defines an employee organization as:

(4) . . . 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.

V.I.B.A. Trust fails to satisfy the first part of the definition (preceding the semi-colon) because employees cannot be said to "participate" in V.I.B.A. Trust in any meaningful way and also because V.I.B.A. Trust does not exist for the purpose of dealing with employers on behalf of employees regarding an employee benefit plan. There is no indication V.I.B.A. Trust represents employees by dealing with their employers on any matters relating to employment relationships.

We also conclude that V.I.B.A. Trust is not an employees' beneficiary association within the second part of the definition. Not every group of persons who each happens to be employed constitutes an employees' beneficiary association. Rather, an organization is an employees' beneficiary association for purposes of the ERISA definitions relating to plans only where the members of the organization share some commonality of interest with respect to their employment relationships. The requirement of a commonality of interest among members applies to all of the types of employee organizations described in ERISA section 3(4). As the participants in V.I.B.A. Trust share no commonality of interest with respect to an employment relationship, we conclude that V.I.B.A. Trust is not an employee organization within the meaning of ERISA section 3(4).

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It is also our view that V.I.B.A. Trust does not constitute an employer within the meaning of ERISA section 3(5). 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."

V.I.B.A. Trust, as represented, is not the actual employer of the individuals entitled to receive benefits under the program. Moreover, the documents fail to indicate that V.I.B.A. Trust meets the rest of the section 3(5) definition. V.I.B.A. Trust does not act in the "interest of an employer" as that phrase is used in section 3(1). For example, although V.I.B.A. Trust enters into subscription agreements with employers, these employers have no control over the benefits to be provided and no authority to change trustees or administrators.

Further, insofar as it might be argued that the Corporation rather than V.I.B.A. Trust has established or is maintaining the program of benefits, it is clear from the foregoing that the Corporation similarly fails to meet the definition of an employer or an employee organization. The Corporation is a for-profit, privately owned corporation which administers the program in return for compensation from V.I.B.A. Trust.

Therefore, it is the position of the Department of Labor that V.I.B.A. Trust is not an employee welfare benefit plan subject to ERISA because it does not satisfy the requirement that such a plan be "established or maintained by an employer, or by an employee organization, or by both."

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.

Sincerely,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs

cc: Mr. Richard P. Viola