

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



MAY 22 1979

Mr. Mark S. Dray
Hunton and Williams
707 East Main Street
Richmond, Virginia 23212

OPINION 79-32 A

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Re: Identification Number: C-4227A

Dear Mr. Dray:

This is in reply to your letter of January 9, 1978, forwarding a copy of your September 9, 1977 advisory opinion request concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the C and O Employees' Hospital Association (COEHA). We regret the delay in responding to your inquiry due to the volume of correspondence concerning ERISA.

Specifically, your inquiry concerns whether the COEHA program constitutes an employee welfare benefit plan within the meaning of ERISA section 3(1). Further, you request that if the Department of Labor opines that the COEHA program is a covered plan, that it be exempt from the application of ERISA section 403(a) which requires that all assets of an employee benefit plan be held in trust.

You represent that COEHA was founded jointly by the Chesapeake and Ohio Railway Company and its employees and is currently administered by a board of directors consisting of a chief administrative officer and 12 representatives of labor unions which are parties to collective bargaining agreements with the Company.

The Company contributes to COEHA on behalf of each of its active employees pursuant to national collective bargaining agreements. In addition, active employees pay dues to COEHA through withholding arrangements with the Company whereby the Company pays over such amounts to COEHA within 1 month of their being withheld. Retirees pay dues directly to COEHA in return for benefits, and the Company makes no contributions on their behalf.

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,

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(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 or retirement or death, and insurance to provide such pensions)."

It is the position of the Department that COEHA is an employee welfare benefit plan within the meaning of section 3(1) because it was established jointly by the employer and employees and is not maintained by representatives of labor unions to which the participants belong and it provides benefits specified in section 3(1) to participants and their beneficiaries.

On the basis of the information furnished in your letter, it does not appear that the Plan would fall within the category of plans to be exempted from the trust requirement under the proposed regulation (copy attached) issued under section 403(b)(4) of ERISA. The proposed regulation exempts only unfunded welfare benefit plans from the trust requirement of section 403(a) of the Act. The preamble to that regulation states that a plan is not an unfunded welfare benefit plan if participants and beneficiaries make contributions to the plan through withholding or otherwise. In the case where the "employee beneficiary association" exists primarily for the purpose of providing welfare benefits, dues paid by members would be construed to constitute contributions in order to obtain benefits. Because certain participants and beneficiaries of the COEHA program make contributions in order to obtain benefits, the Plan does not come within the definition of an unfunded welfare benefit plan under the proposed regulation.

The Department of Labor is currently considering the comments received on the attached regulation prior to publication of such regulation in final form. Because the regulation has not yet been adopted, it will not be possible to respond definitively to the questions you have raised concerning section 403(a) at this time. If, after regulations under section 403(b)(4) are adopted, you continue to have questions regarding the application of this section, you may wish to consider resubmitting your questions to us for a definitive reply.

Generally, a covered employee benefit plan must comply with the reporting and disclosure requirements which are applicable. The final summary plan description regulations were issued on July 19, 1977 and the final annual report regulations were issued March 10, 1978 (copies enclosed).

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This letter constitutes an advisory opinion under ERISA Procedure 76-1, 41 FR 36281. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. We have considered your request for a conference under section 8 of the procedure and have decided that a conference is not necessary in providing these advisory opinions.

Sincerely,

Alan D. Lebowitz
Assistant Administrator
Office of Fiduciary Standards

Enclosures