

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



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OPINION 79-35 A

Mr. Joseph W. Kane
General Counsel
The Commonwealth of Massachusetts
Executive Office of Manpower Affairs
Department of Labor and Industries
Leverett Saltonstall Building, Government Center
100 Cambridge Street
Boston, Massachusetts 02202

514 (a)
514 (b) (4)

Dear Mr. Kane:

This is in response to your letter addressed to Area Administrator Alexander R. Sutton regarding preemption of state laws under section 514 of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the criminal provisions of the Massachusetts "Health, Welfare and Retirement Funds" Law (M.G.L. Chapter 151-D) are preempted under section 514 of ERISA.

Section 514 of ERISA provides:

Sec. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance

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or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

You suggest that the Massachusetts law's criminal provisions might fall within the meaning of the exception provided in §514(b)(4).

The Massachusetts act is applicable only to employee welfare and pension benefit plans. Sections 6 and 11 of this act provide for fines and/or imprisonment where there has been embezzlement or fraud involving plan assets or delinquent contributions by an employer. The rest of the law has provisions which were obviously preempted by the provisions of ERISA.

If the general grand larceny provisions of a state code apply to pension trustees, the exception provided in §514(b)(4) would apply. However, a law which applies only to welfare and pension plans is not a generally applicable law. Accordingly, the criminal provisions of the Massachusetts "Health, Welfare and Retirement Funds" Law is not a generally applicable law and would be preempted under section 514(a) of ERISA. Section 514(b)(4) would not provide an exception for this law.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 (issued August 27, 1976, copy enclosed). 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

Enclosure