

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



JUL 19 1979

OPINION 79-46 A

Mr. David C. Larsen
Cades Schutte Fleming & Wright
P.O. Box 939
Honolulu, Hawaii 96803

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3(5)

Dear Mr. Larsen:

This is in response to your letter of March 17, 1978, regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Hawaii Prepaid Legal Plan (HPLP) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

The documents submitted with your request state that HPLP was created and is administered by Hawaii Prepaid Legal Plans, Inc. (The Corporation). The purpose of HPLP is to provide personal legal services to participants. The Corporation offers HPLP to employers and employee groups for the benefit of their employees and members. The employer may pay the subscription fee, or the cost may be passed on to the employee or member. Participation is voluntary. The Corporation as administrator is responsible for soliciting new participants and retaining attorneys to provide legal services. Further you submitted a copy of a letter addressed to your firm from Russell S. Nagata, Deputy Attorney General of the State of Hawaii, in which he states the position that HPLP is not an employee benefit plan within the meaning of ERISA and that HPLP is subject to state regulatory authority.

In order for HPLP to be subject to ERISA, it must in the first instance satisfy the definition of an employee welfare benefit plan found in ERISA section 3(1), 29 U.S.C. S1002(1). That definition 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, (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,

-2-

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).

Based on the information presented, we conclude that, although the benefits offered by HPLP, i.e., prepaid legal services, are of the type of benefits which may be offered by an employee welfare benefit plan, this program does not satisfy the statutory definition of such a plan because it is not established or maintained by an employer or by an employee organization (or by both) as those terms are defined by ERISA.

As you have represented, and the documents reviewed confirm, HPLP was established by the Corporation with no involvement on the part of any employer or employee organization. Insofar as we can determine from your submissions, the Corporation is a private entity in which the employers and employees who contribute for HPLP benefits hold no interest, and over which they have no control. The Corporation is quite clearly neither an employee organization nor an employer within the meaning of ERISA sections 3(4) and 3(5).

We therefore conclude that HPLP does not constitute an employee welfare benefit plan subject to the coverage of ERISA. The Corporation-HPLP arrangement would, however, be considered a provider to ERISA-covered employee benefit plans to the extent that it contracts to provide the HPLP benefits to prepaid legal services plans subject to the act. A case-by-case examination would be necessary to determine whether some or all of the entities which use HPLP as a vehicle to provide legal services constitute employee benefit plans within the meaning of the act.

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