

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 80-21A
3(1), 4(a)

APR 17 1980

Mr. James R. Deveney, II
Weinberg and Green
Nineteenth Floor
10 Light Street
Baltimore, Maryland 21202

Dear Mr. Deveney:

This is in reply to your letters of November 22, 1978, and May 29, 1979, requesting an advisory opinion regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Civil Employee Association Insurance Trust (the Trust). The following is a summary of the representations contained in your November 22, 1978 letter and of materials which you furnished to us with your letters.

You state that the Trust is sponsored by the Classified Municipal Employees Association of Baltimore City, Inc. (CMEA), a city-wide organization which represents employees of the City of Baltimore with regard to employment and working conditions. Employees of various city agencies voluntarily join CMEA and pay annual dues thereto. The Trust was created by CMEA to enable CMEA members to obtain life insurance, sickness and accident, hospitalization insurance or other insurance under group insurance programs. The Trust may be terminated by CMEA at any time.

The Trust is administered by a board of five trustees. One of the trustees is the incumbent president of CMEA. The other four trustees are elected by the Board of Governors of the CMEA, upon nomination of the president. The Board of Governors of CMEA, upon recommendation of the president, may at any time remove one or more of the trustees, and select a new member as indicated above. The Executive Director of CMEA sits in an advisory capacity on the Board of Trustees of the Trust. According to the trust agreement, the insurance coverage provided by the Trust, and the terms and conditions of the policies effecting the insurance coverage are within the exclusive discretion of the trustees. The trustees select and endorse those group insurance plans which are made available to the CMEA members. Insurance brokers present various plans to the trustees for their approval or disapproval. Upon selection of an insurance plan by the trustees of the Trust, they approve the descriptive literature which will be sent to members of CMEA under the CMEA name. Participation in the Trust for all eligible persons is voluntary. However, a

CMEA member's eligibility to participate in the Trust, under the terms of a particular insurance policy, is determined by the Board of Trustees. No commission is paid to the CMEA or to any individual other than the insurer. The insurer under the group term-life insurance plan pays administrative fees to the Trust in an amount equal to a percentage of the annual insurance premiums. No funds are contributed by CMEA. For those CMEA members participating in the Trust the insurance premiums are deducted from wages and are delivered by the employing city agency to an insurance broker who in turn remits the group insurance premium to the applicable insurance carrier.

In your letters you inquire whether benefits provided through the Trust amount to one or more employee welfare benefit plans, within the meaning of section 3(1) of ERISA, and are therefore subject under section 4(a) of ERISA to title I of ERISA, including the reporting and disclosure requirements set forth in part 1 of that title.

Section 3(1) of ERISA defines an employee welfare benefit plan as follows:

... 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, 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).

Department of Labor regulation 29 CFR 2510.3-1(j) clarifies the definition of the term "employee welfare benefit plan" for purposes of title I of ERISA by indicating that the term "employee welfare benefit plan" will not include group or group type insurance programs offered by an insurer to employees or members of an employee organization if certain criteria are satisfied. As indicated therein, the criteria are that the arrangement must be one in which (1) no contributions are made by an employer or employee organization, (2) participation is voluntary, (3) the sole function of the employer or employee organization with respect to the program is, without endorsing the program, to permit the insurer to publicize the program and to collect and remit premiums to the insurer, and (4) the employer or employee organization receives no consideration in connection with the program other than reasonable compensation for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

In your November 22, 1978 letter, you suggest that the benefit programs provided through the Trust may be group insurance programs described in regulation 2510.3-1(j). As noted above, however, your letters indicate that the Trust was created by CMEA and is sponsored by CMEA, that the Trust is composed of the incumbent president of CMEA and four trustees appointed by

the Board of Trustees of CMEA, that the trustees select and endorse group insurance plans to be made available to CMEA members, and that descriptive literature regarding the insurance program is sent to members of CMEA under the CMEA name. Under these circumstances, it appears that the CMEA's functions with respect to the insurance programs provided through the Trust are not limited to permitting insurers to publicize such programs, without endorsement, and to collecting and remitting premiums to the insurers. In our opinion, therefore, the insurance programs provided through the Trust are not group or group-type insurance programs described in regulation 29 CFR 2510.3-1(j).

You further inquire whether the Trust is to be considered the employee organization maintaining the insurance programs or whether the employee organization maintaining these programs is the CMEA.

The term "employee organization" is defined in section 3(4) of ERISA to mean "... 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."

Regardless of whether the Trust might be deemed to be an employees' beneficiary association, we think that in view of the fact that the Trust was created by the CMEA and in view of the control that the CMEA exercises over the Trust, the benefit programs provided through the Trust are maintained by the CMEA. Since, as you recognize, the CMEA is clearly an employee organization within the meaning of section 4(a)(2) of ERISA, and since the benefit programs offered through the Trust provide benefits described in section 3(1) of ERISA, it is the Department's opinion that these benefit programs amount to one or more employee welfare benefit plans within the meaning of section 3(1).

Under section 3(3) of ERISA, the term "employee benefit plan" is defined to include employee welfare benefit plans. Under section 4(a) of ERISA, title I generally applies, except as provided in section 4(b), to any employee benefit plan if it is established or maintained by, among other entities, any employee organization representing employees engaged in commerce or in any industry affecting commerce. The phrase "industry or activity affecting commerce" is broadly defined in section 3(12) of ERISA. Of the exceptions from title I coverage listed in section 4(b), only section 4(b)(1) appears to be of potential relevance in this matter. Section 4(b)(1) provides that title I of ERISA does not apply to a plan which is a governmental plan, as defined in section 3(32).

The term "governmental plan" is defined in section 3(32) of ERISA as "... a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing ..."

From the information submitted it appears that the Trust was established and is maintained by CMEA and is not maintained and was not established by a governmental entity.

Thus, the Trust is an employee welfare benefit plan subject to title I of ERISA, including the reporting and disclosure provisions set forth in part 1 of that title.

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