

U.S. Department of Labor

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



OPINION 80-54A
514

Feb. 5, 1980

John H. Kelly, Esq.
Milbank, Tweed, Hadley & McCloy
1 Chase Manhattan Plaza
New York, New York 10005

Dear Mr. Kelly:

This is in response to your request for an advisory opinion regarding the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether Section 514 of ERISA preempts the provisions of Section 200 of the Insurance Law of the State of New York as the latter affects The Savings Bank Retirement System ("System").

You advise that the System is a common law trust organized in 1940 to provide retirement and related benefits to the employees of the savings banks and related organizations participating in it. These participating institutions agree to be bound by the terms of the Agreement and Declaration of Trust of the System ("the agreement"). Pursuant to the agreement, a participating bank establishes a retirement plan and obligates itself to make contributions to the System in amounts established by the trustees of the System in amounts established by the trustees of the System on the basis of certifications of actuaries retained by them. These contributions are held and invested by the trustees for the exclusive purpose of providing benefits to participants and beneficiaries. Plans in the System are individually qualified as pension plans under Section 401(a) of the Internal Revenue Code.

You further represent that Section 200 of the Insurance Law in terms, and as it has been administered, treats the System in a manner similar to an insurance company by subjecting it, with certain modifications, to those provisions of the Insurance Law applicable generally to insurance companies. Among other things, the System is licensed by the Superintendent of Insurance of the State of New York ("Superintendent"), is restricted as to the manner of investment of its funds, is subject to approval by the Superintendent whenever it changes its rate of contributions, is required to create reserves, and is subject to periodic examination by the superintendent.

Section 514 of ERISA provides in pertinent part:

(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 [subject to ERISA].

* * *

(b) (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 ... nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer ... or to be engaged in the business of insurance ... for purposes of any law of any State purporting to regulate insurance companies..."

Based on your representations, we have concluded that the System involves a plan or plans within the meaning of ERISA §3(2) and (3) which is covered under ERISA §4(a). We have also concluded that Section 200 of the Insurance Law of the State of New York "relates to" the plan or plans within the meaning of ERISA §514(a). The question of what constitutes "insurance" for purposes of §514(b) is a question of federal law. The Department has determined, in light of the purposes of ERISA as exemplified by the "deemer" clause of §514(b)(2)(B), that the System is not in the business of insurance and that, to the extent Section 200 would apply to the System, that Section is not a law which regulates insurance. Accordingly, although Section 200 is codified with other statutory provisions.

which regulate insurance, we have determined that the provisions of Section 200 as they would apply to the System are preempted by ERISA.

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
Pension and Welfare Benefit Programs