

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 80-14A
3(1), 3(2), 3(4), 3(5)

MAR 12 1980

Mr. Bruce L. Castor
Ballard, Spahr, Andrews & Ingersoll
30 South 17th Street
Philadelphia, Pennsylvania 19103

Dear Mr. Castor:

This is in response to your request of February 1, 1977, for an advisory opinion regarding whether the benefit program maintained by the Lower Merion Township Police Pension Association (Association) is subject to title I of the Employee Retirement Income Security Act of 1974 (ERISA). I regret that our heavy workload has resulted in a delay in responding to your letter.

The following is a summary of the material representations in your letter. The Association provides disability, death, and retirement benefits supplemental to those provided by Lower Merion Township. Membership in the Lower Merion Township Police Force for at least one month is a basic eligibility requirement for receipt of benefits, and policemen who are not Association members are eligible for benefits. Section 2 of the Association by-laws, enclosed with your letter, contains additional specific eligibility requirements. Three trustees hold the assets of the Association, one of whom is appointed by the Board of Township Commissioners of Lower Merion Township, one of whom is appointed by the President Judge of the Court of Common Pleas of Montgomery County, and one of whom is elected by the members of the Association. A majority of the directors and trustees of the Association are not police officers. The by-laws of the Association provide in Article II, Section 2 that the Board of Directors shall consist of the three trustees, the Superintendent of Police of Lower Merion Township, and six members of the Association to be selected annually by the trustees and that not more than four of the directors at any time may be police officers. The Association, as a community group, depends almost entirely on volunteers from the community for staffing, solicitation, and administration. Benefits are provided from the trust income and from contributions solicited annually from the community, and are dependent on voluntary contributions from the community. Membership in the Association is open to anyone who contributes \$5.00. The Association does not deal with an employer with respect to an employee benefit plan.

Enclosed with your letter were, among other documents, a letter dated July 17, 1952, from the Internal Revenue Bureau, U.S. Treasury Department, expressing the opinion that the Association is exempt from Federal income tax under the provisions of section 101(6) of the Internal Revenue Code of 1939, which corresponds to section 501(c)(3) of the Internal Revenue Code of 1954 (the Code); and a letter dated September 22, 1971, from the Internal Revenue Service classifying the Association as an organization that is not a private foundation, as defined in section 509(a) of the Code, because it is an organization described in section 509(a)(1) of the Code. We assume that these letters continue to be valid under current law.

Section 3(1) of ERISA defines “employee welfare benefit plan” in relevant part 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, (A) ... benefits in the event of sickness, ... disability, death ... (other than pensions on retirement or death, and insurance to provide such pensions).”

Section 3(2) of ERISA defines “employee pension 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 by its express terms or as a result of surrounding circumstances such plan, fund, or program -- (A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.”

Under section 3(1) and (2) of ERISA, in order for a plan to constitute an “employee welfare benefit plan” or an “employee pension benefit plan” within the meaning of ERISA it must be established or maintained by an employer, an employee organization, or both. Section 3(5) defines “employer” as any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity. It seems clear that the Association is not an employer, within the meaning of section 3(5) of ERISA, with respect to the benefit program at issue.

Section 3(4) defines “employee organization” as 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.

The Association, according to your letter, does not deal with an employer with respect to a benefit program, and we assume that it does not deal with an employer concerning other matters incidental to the employment relationship.

Under the circumstances described in your letter and the materials submitted therewith regarding the functions, structure, and financing of the Association, moreover, it does not appear that the Association is an employees' beneficiary association, as that term is used in section 3(4).

Since the Association is not an employer or an employee organization, the benefit program which it maintains is neither an "employee welfare benefit plan" under section 3(1) of ERISA nor an "employee pension benefit plan" under section 3(2) and, thus, is not an employee benefit plan within the meaning of section 3(3). Since under ERISA section 4(a), title I of ERISA applies only to employee benefit plans, title I does not apply to the benefit program which the Association maintains.

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