

**U.S. Department of Labor**

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



Reply to the Attention of:  
Pension and Welfare Benefit Programs

OPINION 80-17A  
514

APR 7 1980

Mr. Douglas S. Gates  
Davidson, Fink, Cook and Gates  
900 First Federal Plaza  
Rochester, New York 14614

Dear Mr. Gates:

This is in reply to your letter of March 12, 1979, requesting an advisory opinion regarding the preemption provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether ERISA section 514 preempts that portion of section 250 of the New York State Savings Bank Law (section 250) which, in general, limits the pension that may be paid to a retired employee of a savings bank to the lesser of (1) two percent of such employee's average compensation over his final three years of service times his total years of service; or, (2) 60 percent of his average compensation over his final three years of service.

You advise that your client, Mr. Frank A. Bradt, retired on disability from the Rochester Savings Bank (the Bank) on or about May 7, 1976, with 14 years service. After his retirement, Mr. Bradt was informed by the Bank that his actual retirement benefits were about \$240.00 per month less than the amount the Bank had prior to retirement informed him they would be. The Bank stated that in computing the benefits in the pre-retirement statement section 250 was not considered. You argue that section 514 of ERISA preempts the maximum benefit limitation of section 250 of the state statute and that section 250 is not a "banking" law since it affects banks solely in their role as employers having an employee pension benefit plan and not as banks in their relationship to customers.

ERISA section 514 provides in part:

Act 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 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....

Section 514(a) does not merely preempt state laws which conflict with ERISA but all state laws related to employee benefit plans. Therefore, because that portion of section 250 which limits the amount of retirement benefit available to an employee of a savings bank relates to employee benefit plans, it would be preempted by reason of section 514(a) of ERISA unless it is a "law ... which regulates, insurance, banking, or securities" which is specifically saved from preemption by section 514(b)(2)(A).

The purpose of the maximum benefit limitation in section 250 appears to be to protect shareholders and depositors by limiting the amount a savings bank may expend for retirement benefits. Accordingly, in the Department's view the limitation is a law regulating banking which is described in section 514(b)(2)(A) of ERISA and therefore is not preempted by reason of section 514(a).<sup>1</sup>

You also inquire whether a cause of action could be stated by alleging that the Bank failed to take section 250 into account in calculating Mr. Bradt's estimated pension benefit and therefore misled him to his detriment. Sections 105 and 209 of ERISA require that the administrator of an employee pension plan provide a participant with a statement indicating his total accrued benefits and the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits become nonforfeitable. However, the Department has not yet issued final

---

<sup>1</sup> The Department expresses no opinion here whether any other portion of section 250 is preempted by ERISA.

regulations dealing with these requirements,<sup>2</sup> and it is not clear what, if any, private relief is available to a participant for damages resulting from the delivery of an inaccurate benefit statement. Therefore, the Department has decided not to offer an opinion regarding this issue. See ERISA Procedure 76-1, section 5.01 and 5.03 (41 FR 36281, August 27, 1976).

This letter constitutes an advisory opinion issued 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

---

<sup>2</sup> The Department published proposed regulations under sections 105 and 209 on February 9, 1979 and, in the preamble to the proposed rules, the Department specifically invited comments regarding whether, to what extent, and under what circumstances liability should be imposed for payment of benefits in accordance with the information provided in the benefit statement. See 44 FR 8294, 8296.