U.S. Department of Labor Pension and Welfare Benefits Administration
Washington, D.C. 20210

MAR 16 1988

88-05A
Sec. 3(40), 514

Mr. Stephen E. Lehman
Leatherwood, Walker, Todd & Mann
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Dear Mr. Lehman:

This is in response to your request, on behalf of the Christian Schools and Church Association (the Association), for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested the opinion of the Department of Labor (the Department) as to whether the Christian Schools and Church Association Welfare Benefit Plan (the Association Plan) constitutes an "employee welfare benefit plan" within the meaning of section 3(1) of title I of ERISA, and whether the Association Plan constitutes a "multiple employer welfare arrangement", within the meaning of ERISA section 3(40).

Your correspondence, and accompanying submissions, contained the following facts and representations relevant to your request. The Association (formerly the Independent Baptist Travelers Association), according to its Constitution and By-Laws (effective July 31, 1987), is intended to operate for the benefit of full-time ministers and other full-time employees of independent Christian schools and churches and, among other objectives, to provide reasonable benefits for members of the Association (Article III of Constitution and By-Laws). Membership in the Association is open to anyone who is a full-time minister or other full-time employee of an independent Christian school or church (Article V of the Constitution and By-Laws). The Association is operated by Officers elected from the membership of the Association by the Association's Board of Directors. The Board of Directors is elected from the membership of the Association at the annual meeting of the Association (Article VIII of the Constitution and By-Laws). Each member of the Association in good standing has one vote (Article X of the Constitution and By-Laws).

The Association has offered an insured group health benefit plan to its members for a number of years. On May 1, 1987, the Association changed from a fully-insured medical program to a self-funded medical benefit program. The Association Plan is operated pursuant to a Trust Agreement

(dated July 31, 1987) and a Plan Document (effective May 1, 1987). With regard to the Association Plan, you indicate that any qualified person who elects to join the Association may elect to participate in any one or more of the benefit programs offered by the Association. There is no indication that employers need to adopt the Association Plan or take any action to enable Association members to participate in the Plan. In this regard, you represent that there is no involvement of any kind with respect to the Association Plan on the part of the employers of participating Association members.

The Trust Agreement was entered into by the Association, described as "an unincorporated association of Christian workers" and four individuals, identified as Trustees. According to the Trust Agreement, the Association established the Association Plan to provide medical, dental, and other benefits for eligible members of the Association and their dependents (Recitals). Pursuant to Section 3 of the Trust Agreement, the Trustees are subject to the general direction of the Association's Board of Directors. The Board of Directors of the Association also has the authority to remove Trustees and appoint successor Trustees (Section 7 of the Trust Agreement). According to the Plan Document, the benefits provided by the Association Plan (referred to as the "Christian Insurance Association") include medical, hospital and surgical benefits.

The principal issue raised by your correspondence appears to relate to the application of the preemption provisions of ERISA section 514 and the extent to which those provisions serve to preempt state regulation of the Association Plan. As discussed below, it is the view of the Department that, whether or not the Association Plan constitutes an "employee welfare benefit plan" within the meaning of ERISA section 3(1), the Association Plan would constitute a "multiple employer welfare arrangement," as defined in section 3(40) of ERISA, and thus, due to its self-funded status, would be subject at least to all applicable state insurance laws not inconsistent with title I. Accordingly, we do not believe it is necessary for purposes of this opinion to address the issue as to whether the Association constitutes a "voluntary employees' beneficiary association" within the meaning of ERISA section 3(4) or whether the Association Plan constitutes an "employee welfare benefit plan" within the meaning of ERISA section 3(1). This opinion, therefore, will be limited to the application of ERISA section 514 to the Association Plan.

Section 514 provides, in pertinent part, that:

> (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.
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> …

(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 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.

…

(6)(A) Notwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides --

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A) (ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(1) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in,

> subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.
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> (D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

Thus, while section 514(a) generally preempts any state law relating to an employee benefit plan covered by title I of ERISA, section 514(b)(6)(A) saves from ERISA preemption certain state insurance laws applicable to employee welfare benefit plans which constitute "multiple employer welfare arrangements" within the meaning of ERISA section 3(40).[1] ERISA section 3(40) defines the term "multiple employer welfare arrangement" to mean:

> …an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained --
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> (i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, or
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> (ii) by a rural electric cooperative.

On the basis of the information provided, the Association Plan was established and is maintained for the purpose of providing Association members benefits described in ERISA section 3(1) (i.e. medical, hospital, and surgical benefits).

Further, the Association Plan was established and is maintained for the purpose of providing such benefits to Association members who are full-time employees (i.e., ministers and other employees) of various independent Christian schools and churches (i.e., employees of two or more employers). Further, because the Association Plan is not established or maintained (i) under or pursuant to one or more collective bargaining agreements or (ii) by a rural electric cooperative, the exceptions to the definition of "multiple employer welfare arrangement" would not apply to the Association Plan.

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[1] Because section 514(a) only serves to preempt state laws relating to employee benefit plans subject to title I of ERISA, section 514 will not operate to limit the application of state law to a multiple employer welfare arrangement or any other arrangement which does not constitute an employee benefit plan subject to title I of ERISA.

With regard to the definition of "multiple employer welfare arrangement" you express the view that there must be some direct connection or nexus between an employer and the plan in order to constitute a "multiple employer welfare arrangement" within the meaning of ERISA section 3(40). You contend, therefore, that, because no such connection or nexus exist between employers and the Association Plan, the Association Plan would not constitute a "multiple employer welfare arrangement." We disagree. Section 3(40) does not limit the definition of "multiple employer welfare arrangement" to arrangements established or maintained by an employer. In fact, section 3(40) does not condition "multiple employer welfare arrangement" status on the arrangement being established or maintained by any particular party. Where Congress sought to impose such a condition, it did so. For example, in defining the terms "employee welfare benefit plan" and "employee pension benefit plan," in sections 3(1) and 3(2), respectively, Congress specifically conditioned the status of such plans on the plans being established or maintained by an employer or by an employee organization or by both. It is the view of the Department, therefore, that the term "multiple employer welfare arrangement," as defined in section 3(40), is not limited to those arrangements with respect to which there is some direct connection or nexus between the employer and the arrangement.[2]

Therefore, it is the view of the Department that, because the Association Plan was established and is maintained for the purpose of providing benefits described in ERISA section 3(1) to the employees of two or more employers and the Plan is not otherwise excepted, the Association Plan constitutes a "multiple employer welfare arrangement" within the meaning of ERISA section 3(40). Accordingly, even if the Association Plan were also determined to be an employee welfare benefit plan for purposes of title I of ERISA (in addition to being a "multiple employer welfare arrangement"), ERISA section 514(b)(6)(A) would serve to save from the general preemption provisions of section 514(a) any state insurance law applicable to the Association Plan, to the extent that such state law is not inconsistent with title I of ERISA.[3]

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[2] Section 3(40) of ERISA was added to title I of ERISA by Section 302 of Public Law 97-473. Based on our review of the legislative history relating to section 302, we are unable to find any indication that Congress, in addressing the problem of multiple employer trusts and similar arrangements (welfare plans and otherwise), intended to limit the definition of "multiple employer welfare arrangement" to only those arrangements with respect to which there is employer involvement.

[3] While the Secretary has the authority, under ERISA section 514(b)(6)(B), to establish, by regulation, a process to grant individual or class exemptions for "multiple employer welfare arrangements" which are not fully insured but are employee welfare benefit plans, the Department made a determination shortly after enactment of Public Law 97-473 that, on the basis of the information received in the course of its administration of ERISA, such an exemption process was unnecessary. The Department has not since altered its position.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly this letter is issued subject to the provisions of that Procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Robert J. Doyle
Acting Associate Director for Regulations and Interpretations