

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



MAR 28 1988

88-07A  
Sec. 3(2), 3(4), 3(5)

Aaron N. Clinard, Esquire  
Schock, Schock and Schock  
310 South Main Street  
Post Office Box 1893  
High Point, North Carolina 27261

Dear Mr. Clinard:

This is in response to your request concerning the application of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested the views of the Department of Labor (the Department) as to whether the Carolinas Section of the Professional Golfers' Association of America (CSPGA) retirement plan would constitute an "employee benefit pension plan" within the meaning of section 3(2) of ERISA.

In conjunction with your request, you submitted, among other things, a copy of the CSPGA Articles of Incorporation (dated June 30, 1975) and Constitution (undated), a copy of the 1987 Constitution and By-Laws of the Professional Golfers' Association of America (PGA), the parent organization of the CSPGA, as well as materials concerning the nature of the retirement plan.

According to the Articles of Incorporation of the CSPGA, the CSPGA is a non-profit corporation established to, among other things, elevate the standards of the Professional Golfers' vocation, to promote interest in the game of golf, to protect and advance the mutual interests of its members, to hold meetings and tournaments for the benefit and enjoyment of its members and to assist deserving unemployed members to obtain a position. According to the PGA Constitution, as incorporated in the CSPGA Constitution, it appears that the CSPGA membership is open to certain employers (e.g., "golf professionals"), certain employees (e.g., "assistant golf professionals") and other individuals who may be neither employers or employees (e.g., "Tournament Player").

The retirement plan described in the submitted materials is evidenced by three individual insurance policies issued in 1964 to three members of the CSPGA. The Certificates of Interest refer to the individual policy holders as "participants" in the CSPGA Retirement Plan. The agent of the insurance company was named as trustee on the Certificates and all premiums were paid directly to him by the policy holders. For purposes of the following discussion, we will assume that a bona fide retirement program existed in 1964 and was sponsored by the CSPGA.

Section 3(2)(A) of ERISA defines the term "employee pension benefit plan" to mean:

... 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 --

- (i) provides retirement income to employees, or
- (ii) 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. (Emphasis supplied.)

Accordingly, in order to constitute an employee pension benefit plan within the meaning of ERISA section 3(2), a plan, fund, or program, in addition to providing benefits described in that section, must be established or maintained by an employer, employee organization, or both. The terms "employee organization" and "employer" are defined in ERISA sections 3(4) and 3(5), respectively, as follows:

(4) The term "employee organization" means 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.

(5) The term "employer" means 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.

The Department has taken the position that where membership in a group or association is open to anyone engaged in a particular trade or profession regardless of employer status, and where control of such a group or association is not vested solely in employer members, such group or association is not a bona fide group or association of employers within the meaning of section 3(5) of ERISA. In this regard, membership in the CSPGA appears, from the documents submitted, to be open to employers, employees, and other individuals involved with professional golf; therefore, membership is not conditioned on one's status as an employer. Thus, the CSPGA would not constitute a bona fide association of employers for purposes of title I of ERISA.

Further, there is no indication that the CSPGA is an employee organization within the meaning of section 3(4) of ERISA. The CSPGA does not exist "... for the purpose, in whole or in part, of dealing with employers...." Furthermore, the CSPGA is not an "employees' beneficiary association" because membership in the CSPGA is not conditioned upon one's employment status but rather is open to employers, employees, and other individuals.

Accordingly, based on the described representations, the retirement plan offered by the CSPGA to its members would not constitute an "employee pension benefit plan" within the meaning of ERISA section 3(2) because the plan would not be established or maintained by an employee organization or employer, as those terms are defined in sections 3(4) and 3(5), respectively, of ERISA.<sup>1</sup> However, the Department also wishes to note that there is no factual basis in the submitted material on which the Department could opine that the CSPGA either established or maintains the insurance arrangement as described.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it 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

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<sup>1</sup> Any employer that establishes and maintains the CSPGA plan for its employees, however, may have established an employee pension benefit plan covered by title I of ERISA. This letter is not, however, intended to address any of the issues surrounding ERISA duties or obligations of the CSPGA with respect to such an ERISA plan.