

MEMO# 6511

January 5, 1995

DEPARTMENT OF LABOR ADVISORY OPINION ON ERISA PREEMPTION OF TEXAS UNCLAIMED PROPERTY LAW

January 5, 1995 TO: COMPLIANCE COMMITTEE No. 2-95 PENSION MEMBERS No. 3-95
ABANDONED PROPERTY TASK FORCE RE: DEPARTMENT OF LABOR ADVISORY OPINION ON
ERISA PREEMPTION OF TEXAS UNCLAIMED PROPERTY LAW

Attached is the Department of Labor's Advisory Opinion 94-41A holding that ERISA preempts the application of Texas' unclaimed property law to a profit sharing and retirement trust. The opinion was requested to clarify how a profit sharing and retirement plan should handle unclaimed pension benefits under the Texas statute. The plan document provides that in the event a participant cannot be located, his or her unclaimed benefits are transferred to a "Terminated Employees' Account" separated from the plan's other bank accounts. If a "lost participant" is found within four years, the pension benefits are paid from the main plan account and reimbursed from the Terminated Employees' Account. After four years, the individual's share of the Terminated Employees' Account is transferred to the plan's main account. If the participant is later located, his or her benefits are reinstated and paid by the plan. The Texas statute calls for personal property to be escheated to the state after seven years if a claim to the property has not been asserted, the owner of the property cannot be found, or a will of the owner has not been recorded or probated in the county in which the property is located. The Labor Department's view was that the plan cannot be required under the escheat law to pay the state amounts held in either the Terminated Employees' Account or other plan accounts. In finding the law preempted under ERISA section 514(a), the Department stated that "[s]uch an application of the State escheat law would directly affect the core functions of the Plan by reducing, through the escheat, the amount of plan assets held in trust for the benefit of all participants and beneficiaries of the plan." The Department also discussed its prior ERISA opinion letters on escheat and distinguished the holding in *Aetna Life Insurance Company v. Borges*, 869 F.2d 142 (2d Cir. 1989) in reaching that conclusion. We will keep you advised of developments. John J. Canary, Jr. Assistant Counsel - Pension Attachment