

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-15A
3(32), 4(b)(1)

JAN 23, 1981

Mr. Stanley D. Heisler
Heisler, Van Valkenburgh & Coats
214 East Fifth Street
The Dalles, Oregon 97058

Dear Mr. Heisler:

This is in response to your request, dated June 9, 1980, for an advisory opinion concerning the coverage of the Northern Wasco People's Utility District Retirement Savings Plan (the Plan) under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Plan is exempt from the provisions of ERISA by virtue of its being a "governmental plan" within the meaning of 29 U.S.C. §1002 (ERISA section 3(32)). Since the Department of Labor is responsible for the administration of title I of ERISA, this opinion addresses the applicability of that title to the Plan. Questions concerning the applicability of title IV of ERISA, and the provisions of the Internal Revenue Code added by title II of ERISA, to the Plan should be directed to the Pension Benefit Guaranty Corporation and the Internal Revenue Service, respectively.

Your letter contains the following representations. The Northern Wasco People's Utility District (the District) is a "People's Utility District" created and incorporated pursuant to Chapter 261 of the Oregon Revised Statutes (ORS). The function of the District is to develop the water and energy resources of the state for the benefit of the people of the state and to supply public utility service, including water, water power, and electric energy for all users and uses. The District is governed by a Board of Directors which is elected by the voters of the District in accordance with the election procedures of the State of Oregon (ORS §261.060 and §261.405). The Board of Directors is a legislative body which acts by ordinance or resolution. The Board possesses the power of eminent domain and the power to levy and collect taxes, and it is expressly empowered by ORS §261.305(8) to provide retirement plans for its employees.

The Plan is a defined contribution plan that is established and maintained pursuant to a collective bargaining agreement between the District and the representative of certain of its employees, IBEW Local 125. All Plan participants are employees of the District; Plan participants and the District contribute to the Plan; and the Plan is administered by a board of trustees all of whom appear to be members of the Board of Directors of the District.

Section 4(b)(1) of ERISA states that the provisions of ERISA title I shall not apply to a governmental plan described in section 3(32) of ERISA. Section 3(32) of ERISA, in relevant part, defines the term "governmental plan" to mean "... a plan established or maintained for its employees by ... the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing"

In view of your representations with respect to the participation of the District - a political subdivision of the state - in the establishment, administration, and funding of the Plan on behalf of its employees, it is the opinion of the Department that the District's employee benefit plan is a governmental plan within the meaning of section 3(32) of ERISA and is therefore excluded under section 4(b)(1) from ERISA title I coverage.

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