

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 81-53A  
SECTION 3(32), 4(b)(1)

JUN 18 1981

Mr. Patrick E. Murphy  
Faulkner, Banfield, Doogan & Holmes  
Suite 201  
311 Franklin Street  
Juneau, Alaska 99801

Dear Mr. Murphy:

This is in reply to your letter of December 16, 1980, concerning the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an opinion of whether the Alaska Public Employees Legal Fund (the Legal Plan) is a "governmental plan" within the meaning of section 3(32) of ERISA.

The following representations are made in your submission. The Legal Plan covers 6,000 general government employees of the State of Alaska. The Legal Plan also covers approximately 135 classified school district employees who are members of the bargaining unit known as the Juneau Education Support Staff Association (JESS).<sup>1</sup> Further, it is likely that on July 1, 1981, 850 members of the Supervisory Bargaining Unit of the State of Alaska will join the Legal Plan.

The Legal Plan was jointly established on January 1, 1980, pursuant to a collective bargaining agreement between the State of Alaska and the Alaska Public Employees Association (APEA) which exclusively represents public employees. The JESS participation was jointly established pursuant to a collective bargaining agreement between APEA and the City and Borough of Juneau School District.

The Legal Plan is funded exclusively by the State of Alaska and the City and Borough of Juneau School District. The Legal Plan is operated by a Board of six trustees, five of whom are elected public employees from the membership of APEA and one of whom is the Assistant Superintendent of the City and Borough of Juneau School District. Each trustee has one vote and action by the Board of Trustees requires a majority vote.

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<sup>1</sup> We assume that the Juneau Education Support Staff Association is an entity composed solely of employees of the Juneau School District, a political subdivision of the State of Alaska.

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 an agency or instrumentality of any of the foregoing." Section 4(b)(1) of ERISA states that the provisions of title I of ERISA shall not apply to a governmental plan described in section 3(32).

The Department has previously concluded that section 3(32) of ERISA includes not only plans established by the unilateral action of employers which are governmental entities, but also collectively bargained plans and plans jointly administered by trustees appointed by governmental entities and by labor unions in the "governmental plan" definition if these plans are funded by and cover only employees of governmental entities. ERISA Opinion 79-83A dealt with a plan which, like the Legal Plan, was maintained pursuant to a collective bargaining agreement between a union and an employer which was an agency or instrumentality of a political subdivision of a state. The plan at issue in ERISA Opinion 79-83A was funded exclusively by the employer and was jointly administered by six union-appointed trustees and one employer-appointed trustee. The Department concluded that that plan was a governmental plan within the meaning of ERISA section 3(32). See also ERISA Opinion 79-36A. Based on your representations and in light of the similarities between the Legal Plan and the plan at issue in ERISA Opinion 79-83A, the Department concludes that the Legal Plan is a governmental plan within the meaning of ERISA section 3(32) and, thus, is excluded from coverage under ERISA title I pursuant to ERISA section 4(b)(1).

This letter constitutes an advisory opinion 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