

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-85A
Sec. 4(b)(1), 3(32)

DEC 14 1981

Mr. David K. Replogle
Sheeks, Oswald & Bassing
1010 B Street
San Rafael, California 94901

Dear Mr. Replogle:

This is in reply to your letters of April 29, and July 2, 1981, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether two programs of the Association of California Hospital Districts (ACHD) are covered by ERISA title I and whether ACHD is a fiduciary under the provisions of title I of ERISA.

Your letters and accompanying documents contain the following facts and representations: ACHD offers three programs to its members - Programs Alpha, Beta, and Gamma. Program Beta, about which you raise no questions, is a fund for payment of medical injury tort judgements or settlements against the participating members. Program Alpha is a self-insurance program providing coverage of workers' compensation liabilities of members. Program Gamma is a self-insurance program providing health care benefits to employees of members. All three programs are limited to members of the ACHD. ACHD is an association authorized under the California Government Code sections 6500 et seq., which authorizes the joint exercise by two or more public agencies of any power common to them. All members of the ACHD are local hospital districts authorized by the State of California. Local hospital districts are governmental entities, similar to school and water districts, organized under the California Local Hospital District Act, California Health and Safety Code section 32000 et seq. They have the power of eminent domain and the power to levy taxes, and they are governed by a board of directors elected by registered voters residing in the district. Each local district which is a member of ACHD designates one of its directors as its representative with the power to vote at ACHD meetings. Any director of a member in good standing may be elected to the ACHD board of directors. Among other things, the board has the authority to administer joint powers agreements entered into by ACHD members, such as the agreements under which Programs Alpha and Gamma were established. In 1974, the Internal Revenue Service issued a letter stating that the ACHD appeared to be a governmental unit or political subdivision whose income is not taxable under section 115 of the Internal Revenue Code.

ERISA section 4(a) provides that title I of ERISA generally applies to any employee benefit plan established or maintained --

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

However, section 4(b)(1) provides an exemption from coverage under title I to any plan that is a governmental plan. The term "governmental plan" is defined in section 3(32), in pertinent part, as, "... a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing"

Based on your representations, it is the position of the Department of Labor that the ACHD and its members, the local hospital districts, are entities among those described in section 3(32). Therefore, to the extent that benefits are provided to employees through Alpha, Beta, and Gamma, and the benefits are among those described in sections 3(1) and 3(2) of ERISA, such benefits are provided by employee benefit plans which are governmental plans within the meaning of section 4(b)(1) and are not covered by title I of ERISA.

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,

Jeffrey N. Clayton
Acting Administrator
Pension and Welfare Benefit Programs