

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-2A  
Section 3(32), 4(b)(1)

JAN 6 1982

Mr. Grover C. Wilcher  
General Counsel  
Truman Medical Center  
2301 Holmes Street  
Kansas City, Missouri 64108

Dear Mr. Wilcher:

This is in reply to your letter of December 22, 1980, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Truman Medical Center Retirement Plan (the Plan) is a governmental plan within the meaning of ERISA section 3(32) and thereby is excluded from coverage under title I by section 4(b) of ERISA.

From the material submitted with your request and subsequently with a copy of a letter dated January 2, 1981, to Mr. Henry Rose, General Counsel, Pension Benefit Guaranty Corporation, it appears that Truman Medical Center ("TMC") was incorporated in 1962 by 15 private citizens under the Missouri nonprofit corporation statute. TMC was established to operate municipal facilities for the furnishing of free medical care to indigent residents of Kansas City. Under Article III (3) of the Bylaws of TMC, the Board of Directors is comprised of 47 individuals, seven of whom represent and are selected by Kansas City and seven of whom represent and are selected by Jackson County. (You stated in a telephone conversation on June 8, 1981 with John Keene of my staff that the presence of the governmental representatives on the board arose as a result of agreements with the City and County.) In an agreement between TMC and Kansas City, TMC agreed to provide medical care to indigents of the City in return for the City leasing TMC its hospital facilities and paying TMC a mutually agreed upon sum. In a later agreement between TMC, Kansas City, and Jackson County, the City agreed to purchase land and transfer it to the County, the County agreed to build a new hospital facility on that land and lease it to TMC, and TMC agreed to operate the new facility and provide medical care to indigents of the County and City in return for a mutually agreed upon sum to be paid TMC by the City. TMC has also entered into an agreement of affiliation with the University of Missouri. Those arrangements are terminable by either party.

The financial statements submitted with your letter indicate that, for the year ended April 30, 1980, approximately \$17 million (out of a total of approximately \$43 million) of TMC's operating revenues were derived as "subsidies" from Kansas City and Jackson County. We assume, for purposes of this letter, that the "subsidies" represent payments made under the aforementioned agreements. Patient service revenues accounted for an additional \$20 million (approximately) in operating revenues.

You also stated that in 1963 the Internal Revenue Service determined that TMC was a "wholly-owned instrumentality of Kansas City," but that by letter dated December 2, 1980, the Labor-Management Services Administration of the Department of Labor notified TMC that TMC is not a governmental agency or instrumentality and that, therefore, the Plan is not excluded from coverage under title I of ERISA.

Section 4(b)(1) of ERISA excludes governmental plans from coverage under title I of ERISA. Section 3(32) defines the term "governmental plan" to include:

... 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. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669).

It is the position of the Department of Labor that Truman Medical Center is not a governmental agency or instrumentality. Rather, it appears to the Department that the relationship of TMC to the governmental entities involved is that of an independent contractor, not controlled by any of those entities.

Therefore the Truman Medical Center Retirement Plan is not a governmental plan within the meaning of section 3(32) since it was not established or maintained by a governmental entity. Accordingly, unless the Plan is otherwise excluded from coverage under title I of ERISA, it would have to comply with the applicable requirements of that title.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs