

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 82-7A
SEC. 3(32), 4(b)(1)

FEB 1 1982

Mr. William T. Knox IV
Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan
65 Livingston Avenue
Roseland, New Jersey 07068

Dear Mr. Knox:

This is in reply to your letter of September 28, 1981, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you inquire whether the New Jersey Transit Corporation (NJTC), Transport of New Jersey (TNJ) and Maplewood Equipment Company (MEC) are agencies or instrumentalities of the State of New Jersey within the meaning of the definition of the term "governmental plan" in section 3(32) of ERISA. Additionally, assuming that the Department of Labor (the Department) concludes that NJTC, TNJ, and MEC are agencies or instrumentalities of the State, you inquire whether so long as they retain that status, the pension plans maintained by them will be governmental plans excluded under section 4(b)(1) from coverage under title I of ERISA.

According to your representations, NJTC is a public corporation established by the New Jersey Public Transportation Act of 1979 (the Act) for the purpose of providing "efficient, coordinated, safe and responsive transportation." NJTC is "established in the executive branch of state government" and "is constituted as an instrumentality of the state, exercising public and essential governmental functions." To effect its statutory purpose, NJTC is authorized by the Act to exercise the State's powers of eminent domain. NJTC is governed by a board of seven directors, two being the State Commissioner of Transportation and the State Treasurer, the third an unspecified member of the executive branch of the State, and the remaining four being appointed by the Governor. NJTC is funded by State legislative appropriations, grants and loans available from the various governmental programs related to mass transportation, as well as fares collected from transit passengers.

The Act authorized NJTC to purchase the stock "of a public or private entity providing public transportation services within the State." Pursuant to this authority, NJTC purchased from Public Service Electric and Gas Company (PSE&G) all of the stock of its wholly owned subsidiary, TNJ, which itself owns all of the stock of MEC. TNJ and MEC are public carriers currently operating buses which carry the majority of the commuter bus traffic in the State of New Jersey.

After the consummation of the sale of TNJ and MEC, NJTC appointed the board of directors and executive management of TNJ and MEC. TNJ and MEC continue to be maintained as separate corporate entities subject to the complete control of NJTC. TNJ and MEC continue to operate commuter bus systems, to employ the participants in the pension plans, and to maintain those plans, participation in which is substantially unchanged by the NJTC purchase of TNJ. You indicate that pursuant to the purchase contract between NJTC and PSE&G, PSE&G caused funds to be contributed to the pension plans to cover the liabilities for benefits accrued under the plans through June 30, 1980, whether or not vested. After June 30, 1980, the operations and obligations of the plans became the responsibility of TNJ and MEC, with NJTC as the ultimate guarantor of the accrued benefits.

A plan committee composed equally of labor and management representatives controls the two collectively bargained plans for TNJ union-employees. A plan committee for the plan covering TNJ non-union employees and for each of the MEC plans is composed entirely of management employees.

Section 4(b)(1) of ERISA exempts governmental plans from coverage under title I. Section 3(32) of ERISA defines the term "governmental plan," in part, 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.

Based on the above, it is the position of the Department that NJTC is an agency or instrumentality of the State of New Jersey. In addition, it is our opinion that after the consummation of the sale of TNJ and MEC to NJTC, pursuant to which NJTC obtained complete control of TNJ and MEC, TNJ and MEC are also agencies or instrumentalities of the State of New Jersey. Accordingly, it is the position of the Department that so long as NJTC, TNJ, and MEC retain their status as agencies or instrumentalities of the State of New Jersey, any plans maintained by them for their employees are exempt from coverage under title I of ERISA under section 4(b)(1) thereof.

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

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs