

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-8A
Sec. 3(32)

JAN 24 1983

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 January 15, 1982, requesting a reconsideration of our advisory opinion to you dated January 6, 1982 (Opinion 82-2A). In that opinion, the Department of Labor (the Department) took the position that the Truman Medical Center Retirement Plan (the Plan) was not a governmental plan within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) and, unless otherwise excluded from coverage, would have to comply with the applicable requirements of title I of ERISA.

Specifically, your letter of January 15, 1982, requests:

- 1) that the Department reconsider its advisory opinion of January 6, 1982,
- 2) that the Department not implement that opinion until the Pension Benefit Guaranty Corporation (PBGC) completes its reconsideration of its determination dated December 9, 1981, that the Plan is not a governmental plan within the meaning of section 4021(b)(2) of ERISA and that the Plan is covered by title IV of ERISA, and
- 3) that, if it is finally determined that the Plan is not a governmental plan, the effective date of such treatment should be January 1, 1982.

With regard to your first request, the Department has reviewed the position stated in our advisory opinion of January 6, 1982. However, it is still the Department's position that Truman Medical Center (TMC) is not a governmental agency or instrumentality within the meaning of section 3(32) of ERISA. The Department still views the relationship of TMC to the governmental entities involved as that of an independent contractor, not controlled by any of those entities. We note that TMC has been considered nongovernmental by the PBGC, the Social Security Administration, and the National Labor Relations Board.

With regard to your second request, it is our understanding that the PBGC has completed its reconsideration of its determination that the Plan is not exempt from coverage under title IV of ERISA.

Finally, with regard to your request that the effective date for coverage under title I of

ERISA be January 1, 1982 if the Plan is determined not to be a governmental plan, we note that the effective dates of parts 1, 2, 3, and 4 of title I of ERISA are statutorily determined and contained in sections 111, 211, 306, and 414 of title I of ERISA, respectively.

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