

U.S. Department of Labor

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

Reply to the Attention of:



OPINION NO. 83-24A
Sec. 3(32)

MAY 18 1983

Mr. Leon Rothenberg
Executive Director
Federation of Tax Administrators
444 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Rothenberg:

This is in reply to your letter of August 27, 1982, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the FTA Staff Pension Plan is a governmental plan within the meaning of section 3(32) of ERISA.

You advise that the FTA Staff Pension Plan is maintained by the Federation of Tax Administrators (FTA) for its employees. FTA is a non-profit association whose membership consists of the revenue agencies of the fifty states and of the District of Columbia. Originally organized in 1937 in Illinois, FTA is currently incorporated in the District of Columbia. The FTA By-laws state that, in pursuit of its purpose of improving the techniques of tax administrators, FTA will establish a clearinghouse for the interchange of information and undertake research into tax and administrative problems confronting FTA members. FTA is governed by its Board of Trustees which consists of the Executive Committee of the National Association of Tax Administrators (NATA), the three most recent ex-presidents of NATA holding office as tax administrators, one member each from the National Tobacco Tax Association and the North American Gasoline Tax Conference, and one member from each of the Federal, state, and foreign government tax sectors. FTA is funded by assessments against individual state revenue departments (87 percent of FTA's 1981-82 fiscal year income), income from surplus funds, and sales of its publications to the public. Each member is annually assessed a percentage of its total revenue collections.

Section 4(b)(1) of title I of ERISA excludes governmental plans as defined in ERISA section 3(32) of title I from coverage under title I of ERISA. The definition of the term "governmental plan" provided in section 3(32) includes ". . . a plan established or maintained for its employees" by an agency or instrumentality of the government of any state.

In view of the substantial sponsorship and contributions by the several states to FTA for its operation and the interrelationships among the states, the revenue agencies of the several states, and FTA, we conclude that the FTA Staff Pension Plan is a governmental plan within the meaning of ERISA section 3(32) and is, therefore, excluded by ERISA section 4(b)(1) from coverage under

title I of ERISA.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,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs

¹ This opinion takes no position as to whether FTA constitutes specifically an “agency” or an “instrumentality” of state government or concerning whether employees of FTA are employees of any specific governmental unit.