

U.S. Department of Labor

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



Reply to the Attention of:

NOV 9 1983

Mr. Joseph Groff
Assistant U.S. Attorney
U.S. Department of Justice
P.O. Box 1588
Portland, Maine 04104

Dear Mr. Groff:

This is in reply to your request for an opinion regarding coverage of the Brunswick/Topsham Water District Pension Plan (the Plan) under title I of the Employee Retirement Income Security Act of 1974 (ERISA).

We have examined copies of the adoption agreement of the Union Mutual Life Insurance Company Prototype Combination Fixed Benefit Pension Plan, Form 4462 Application for Determination dated December 21, 1973, and the Internal Revenue Service determination letter dated March 13, 1974, addressed to the Brunswick/Topsham Water District (the Water District). These documents indicate that the Plan was established and/or maintained by the Water District.

ERISA title I, section 4(a) specifies that ERISA title I applies to any employee benefit plan if it is 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, except for plans specifically exempt under section 4(b).

Section 4(b) of title I of ERISA exempts certain employee benefit plans from coverage. Governmental plans as defined in section 3(32) of title I of ERISA are exempt under section 4(b)(1) from coverage under title I of ERISA. Section 3(32) of title I of ERISA defines the term "governmental plan" to include, among others, any plan established or maintained for its employees by the government of any state or political subdivision thereof or by any agency or instrumentality of a state or political subdivision thereof.

Assuming that the Brunswick/Topsham Water District is an agency or instrumentality of the State of Maine or of a political subdivision of that state, the Brunswick/Topsham Water District Pension Plan would be a governmental plan within the meaning of section 3(32) of ERISA. If that is the case, the Brunswick/Topsham Water District Pension Plan would be exempt from coverage under title I of ERISA pursuant to section 4(b)(1).

Sincerely,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs