



Opinion 84-37A

OCT 17 1984

Mr. Eric R. Jankel
Executive Director
The Narragansett Bay Commission
57 Eddy Street
Providence, Rhode Island 02903

Dear Mr. Jankel:

This is in reply to your request for an advisory opinion on behalf of the Narragansett Bay Water Quality Management District Commission (the Bay Commission). Specifically, your request concerns whether the Bay Commission's employee benefit arrangement for its employees who do not participate in Rhode Island's retirement system constitutes a governmental plan excluded from title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying material contains the following facts and representations. The Bay Commission maintains and operates the wastewater treatment facility and the main sewer lines for Providence, Rhode Island, and surrounding communities. The Bay Commission was created by the Rhode Island legislature (R.I.G.L. §46-25 et seq.). Its governing board consists of 16 members appointed by various state and local elected officials in accordance with the applicable state statute. In addition, the Rhode Island budget officer is an ex officio member of the board. The Bay Commission collects user fees for services it provides and, according to statute, may borrow in anticipation of receipt of such fees or in anticipation of receipt of state or Federal funds by issuing notes. The Bay Commission's capital construction budget is funded through Federal grants and through Rhode Island bond issue. The Bay Commission has the power of eminent domain and, for purposes of hearings before the Bay Commission, the power to issue subpoenas and administer oaths.

Although all individuals in the service of the Bay Commission are considered employees of the State of Rhode Island, and all personnel actions for Bay Commission employees are processed through Rhode Island's personnel system, employee benefit arrangements for non-classified employees of the Bay Commission are separate from those for its classified employees. All unionized Bay Commission employees are members of the Rhode Island classified service and, thus, participate in a retirement system offered by Rhode Island to its classified employees. The Bay Commission itself offers other employees (i.e., all non-classified employees) a simplified employee pension (SEP).

It is the SEP set up by the Bay Commission for its non-classified employees which is the subject of your request regarding the definition of a governmental plan.

ERISA section 4(b)(1) excludes governmental plans from coverage. ERISA section 3(32) defines the term "governmental plan" as "... 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 ...” Based on the factual situation you describe, there is sufficient reason to conclude that the Bay Commission’s establishment and maintenance of a SEP for its non-classified employees constitutes establishment and maintenance of a governmental plan for governmental employees by an agency, instrumentality, or political subdivision of state and local government. Accordingly, section 4(b)(1) of title I of ERISA excludes the Bay Commission’s SEP from coverage under title I of ERISA.

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,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations