

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



FEB 3 1986

86-07A
Sec.

Mr. William Stix
Attorney at Law
230 South Bemiston Street
Suite 410
St. Louis, Missouri 63105

Dear Mr. Stix:

This is in reply to your correspondence with the Department of Labor (the Department) concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to benefits provided by the St. Louis Police Relief Association (the Association) to its members. Specifically, your question concerns whether the Association's program of benefits is excluded from ERISA title I coverage by ERISA section 4(b)(1) as a governmental plan defined in ERISA section 3(32).

The information provided by you in connection with the Association's request for an advisory opinion is as follows. The Board of Police Commissioners of the City of St. Louis (the Board) is established by Missouri law, and four of its five members are appointed by the Governor. The Board is required by Missouri law to appoint and employ a police force to aid the Board in the performance of its duties.

The Association was formed in 1882 pursuant to Missouri statute. Specifically, section 86.500 of Missouri Revised Statutes authorizes certain Missouri police forces to form relief associations. Prior to 1969, membership in the Association was a requirement for police force commissioned personnel. In 1969, membership in the Association became voluntary, although limited to police force members, and the Board instituted a separate program of fringe benefits.

Section 86.503 of Missouri Revised Statutes provides for police relief associations to receive proceeds from the sale of unclaimed personal property. Section 86.503 of Missouri Revised Statutes also provides for police relief associations to receive all "percentages of rewards" which otherwise would become the property of individual police force members. The Board also supports the Association by allowing the Association to receive commissions on vending machines in certain police force buildings and by providing free office space and free telephone service. Funds acquired by the Association from other sources are as follows: members' dues of

\$2 biweekly through payroll deductions, proceeds from an annual softball game, income from investments, and unsolicited donations.

Article II of the Association's charter states its purposes are to provide relief to members who become sick, disabled, or terminate employment due to incapacitation by long years of service, to aid families of police officers who die while members of the Association, and to provide retirement benefits to members of the Association who have severed their connection with the force after at least 5 years of service. The Association pays cash amounts to members incapacitated from duty due to sickness lasting more than 3 days. Lump sum payments are provided to members who request retirement benefits after at least 5 years of service with the St. Louis police force. Cash lump sum benefits go to members who, at any time during membership, become permanently disabled due to injury and to those who, after 10 years of service, become permanently disabled due to disease or sickness. Lump sum death benefits are paid to beneficiaries of a member who dies and to each member whose spouse dies. The Association also provides uniformed escort and automobiles for funerals of Association members.

The Association is governed by an executive committee of 20 members. The police chief is an ex officio member of the committee, and, as you informed this Office by telephone, he or she is an appointee of the Board. The police chief is eligible to join the Association but may opt not to do so. The members of the Association elect the other 19 members of the executive committee. The executive committee, in turn, elects officers for the Association, including a three-member board of trustees which supervises all money and property belonging to the Association.

Section 4(b)(1) of ERISA excludes governmental plans from coverage by title I of ERISA. Section 3(32) defines the term "governmental plan" to include, in pertinent part, "... 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...."

Because the Association was formed according to Missouri statute which also earmarked public funds for its use, because the Association's program of benefits covers only Board employees all of whom are employees of a government agency or instrumentality, and because the Board's activities in connection with the Association result in additional support for the Association, the Department views the Association's program of benefits as a governmental plan. We also note that the presence of a Board appointee among the membership of the Association's executive committee is an additional indication of the governmental plan status of the Association's program of benefits.

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
Assistant Administrator for Regulations and Interpretations