

**U.S. Department of Labor**

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



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86-10A  
Sec.

Mr. Mark S. Wintner  
Stroock & Stroock & Lavan  
7 Hanover Square  
New York, New York 10004-2594

Dear Mr. Wintner:

This is in reply to your correspondence on behalf of the City Employees Union Local 237, International Brotherhood of Teamsters (Local 237) Training and Educational Fund (the Fund) requesting an advisory opinion concerning title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the Fund is excluded from coverage under title I of ERISA by section 4(b)(1) as a "governmental plan" within the meaning of section 3(32) of title I of ERISA.

Your correspondence and the accompanying materials contain the following facts and representations. By indenture of February 28, 1980, signed by Local 237 and by Fund trustees, the Fund was established to provide opportunities for training and education beyond those provided by the New York City Housing Authority (the Housing Authority). Establishment of the Fund was in accordance with a collective bargaining agreement between Local 237 and the Housing Authority. The Fund defines "contributing employer" as follows in Article II, section 2:

"Contributing employer" shall initially mean the New York City Housing Authority.  
"Contributing Employer" shall also mean the City of New York or any Department, Agency, or Municipal Division thereof if any such municipal employer should enter into an agreement with Local 237 calling for contributions to be made by such employer(s) to the Trustees for the purpose of providing training and/or educational programs to employees represented by Local 237 in job titles specifically covered by such agreement or agreements.

At the time of your request, the sole contributor to the Fund was the Housing Authority, and all participants in the Fund were employees of the Housing Authority who were Local 237 members. Although the Fund may accept grants for the purpose of providing additional educational programs having both governmental and/or charitable sources, it is not contemplated that grants will constitute a substantial percentage of contributions to the Fund.

Trustee for the Fund, as provided by its indenture, shall be no less than three persons. All Fund trustees are appointed by the executive board of Local 237.

Section 4(b)(1) of title I of ERISA excludes from coverage under that title any governmental plan described in section 3(32) 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...."

It is the view of the Department of Labor (the Department) that the term "governmental plan" as defined in ERISA section 3(32) is not limited to plans established by the unilateral action of employers which are governmental agencies. In this regard, the Department has interpreted the term "governmental plan" to include plans established or maintained pursuant to a collective bargaining agreement between a governmental entity and a labor union where such plans are funded by and cover only employees of governmental entities.

On the basis of facts and representations contained in your correspondence and related documents, it is the view of the Department that, insofar as the Fund appears to cover only individuals employed by the Housing Authority and insofar as the Housing Authority represents its sole source of funding, the Fund was established and is maintained by the Housing Authority, an agency, instrumentality, or political subdivision of Federal, state, and/or local government, for its employees. Accordingly, the Fund constitutes a "governmental plan" within the meaning of section 3(32) of title I of ERISA and, thus, is not subject to the provisions of title I of ERISA pursuant to section 4(b)(1) of ERISA. It should be noted, however, that to the extent participation in the Fund is extended to include employees of employers other than agencies, instrumentalities, or political subdivisions of government or to the extent the Fund accepts contributions from entities other than agencies, instrumentalities or political subdivisions of government, the Department's position concerning the status of the Fund as a governmental plan may be affected.

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