

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



SEP 9 1986

86-23A  
Sec.

Mr. Steven Bloom  
Kaplan, Sicking & Bloom, P.A.  
Suite 200 Forum III  
1675 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33401

Dear Mr. Bloom:

This is in reply to your request to the Department of Labor (the Department) for an advisory opinion as to whether the Palm Beach County Fire Fighters Employees' Insurance Fund (the Fund) constitutes a "governmental plan" within the meaning of section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and is, therefore, excluded from coverage under title I of ERISA pursuant to section 4(b)(1) thereof.

Your correspondence and the accompanying documents contain the following facts and representations. Palm Beach County (the County) is a political subdivision of the State of Florida. Local 2928 of the International Association of Fire Fighters, AFL-CIO (Local 2928) is the exclusive bargaining representative for all employees of the Palm Beach Fire-Rescue Department in the bargaining unit certified by the Public Employees Relations Commission. Pursuant to the collective bargaining agreement between the County and Local 2928, group health, life and accidental death and dismemberment benefits are provided to all employees covered by the collective bargaining agreement (Art. 38, Sec. 1). The Fund was established for the purpose of providing such benefits. The Fund is operated in accordance with an Agreement and Declaration of Trust, effective October 10, 1984 (the trust agreement).

You indicate that benefits provided by the Fund for employees covered by the collective bargaining agreement are funded entirely by the County while dependent coverage is funded primarily by employee contributions. Pursuant to the collective bargaining agreement the County contributes \$110 per month per collective bargaining unit employee (Art. 38, Sec. 5). Currently, each employee who desires dependent coverage contributes \$60 per month to the Fund, although the actual cost of such coverage may be higher. Under the collective bargaining agreement, persons covered by the Fund who retire may continue to be covered by the Fund at rates then charged by the Fund, at no cost to the County (Art. 38, Sec. 1). In this regard, you indicate that there are no retirees participating in the Fund.

Pursuant to the trust agreement, there are five trustees of the Fund who are appointed by Local 2928 and who are scheduled to serve on the board until October 31, 1985. Effective November 1, 1985, there will be seven trustees, six trustees elected from bargaining unit personnel and the President of Local 2928 (Art. III, Sec. 3.1). The board of trustees is responsible for, among other things, receiving contributions, paying expenses, paying benefits, managing and investing Fund assets, and adopting plan provisions and amendments thereto (Art. V). The County does not appoint trustees or otherwise participate in the day-to-day operations of the Fund. Beyond being a party to the collective bargaining agreement, pursuant to which the Fund is established, the County's involvement with the Fund is limited to making contributions in accordance with the terms of the collective bargaining agreement and the right to review, upon request, any records related to the Fund, to the extent permitted by law (collective bargaining agreement Art. 38).

We note that the trust agreement contains provisions which would permit entities other than Palm Beach County and Local 2928 to become parties to the trust agreement for the purpose of providing benefits to their employees. Specifically, Article IX, Section 9.3 of the trust agreement provides that "[t]he Board of Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Board of Trustees shall determine ..." and Article IX, Section 9.5 of the trust agreement permits the board of trustees to merge the Fund "with any other trust fund established for similar purposes as this Trust Fund ..." Article I, Section 1.10 of the trust agreement defines "employee" for the purpose of receiving benefits through the Fund, to include: (1) any employee with respect to whose employment an employer is required to make contributions to the trust fund in accordance with a collective bargaining agreement; (2) officers and salaried or hourly employees of an employer and of Local 2928, its state affiliate or International parent body, provided they are accepted by the board of trustees; and (3) any employee of the Fund or any other trust fund established pursuant to a collective bargaining agreement with Local 2928. The term "employer" is defined in Article I, Section 1.11 of the trust agreement to include: (1) other employers besides Palm Beach County that are required to make contributions to the Fund, regardless of whether they recognize Local 2928 as the bargaining representative for their employees; (2) Local 2928 for the purpose of covering its employees; and (3) the board of trustees of the Fund or any other trust fund established pursuant to a collective bargaining agreement with Local 2928 for the purpose of covering trust fund employees with benefits.

With regard to the above provisions you represent that coverage by the Fund has not, in fact, been extended to the employees of any employers other than the County and no employees are eligible to receive benefits under the Fund other than the bargaining unit employees of the Palm Beach County Fire-Rescue Department represented by Local 2928. While officers of Local 2928 and the members of the board of trustees are covered by the trust agreement, you represent that those persons are all members of the bargaining unit and are employees of the County and contributions are made for them on the same basis as for other members of the bargaining unit.

You indicate further that there are no employees of Local 2928 or employees or officers of the Fund other than the trustees covered for benefits under the Fund.

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 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 the facts and representations contained in your correspondence and related documents, it is the view of the Department that, because the Fund covers only individuals employed by the County and their dependents and because the County represents the sole source of funding, with the exception of funds contributed by County employees for coverage of their dependents, the Fund constitutes a "governmental plan" within the meaning of ERISA section 3(32) established and maintained by Palm Beach County, a political subdivision of the State of Florida, for its employees. Accordingly, the Palm Beach Fire Fighters Employees' Insurance Fund is not subject to the provisions of title I of ERISA pursuant to ERISA section 4(b)(1). It should be noted, however, that to the extent participation in the Fund is extended to include employees or former employees of employers other than Palm Beach County or the Fund is merged with any other trust fund, as permitted under the trust agreement, 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