

U.S. Department of Labor

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



APR 25 1990

ERISA OPINION 90-09A
Sec. 3(32)

Mr. Lloyd N. Moore, Jr.
Leftwich Moore & Douglas
Suite 1100
1133 Fifteenth Street, N.W.
Washington, D.C. 20005-3922

Dear Mr. Moore:

This responds to your request for an advisory opinion concerning whether the Washington Convention Center Employees' Retirement Plan (the "Plan") is a "governmental plan" within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Your submission contains the following facts and representations.

The Washington Convention Center Board of Directors (the "Board") is established as an independent agency of the District of Columbia (the "District") pursuant to the Washington Convention Center Management Act of 1979, D.C. Law 3-36 (D.C. Code, §9-601 et seq.) (the "Act"). The Board has the duty and responsibility to, inter alia, "[d]evelop policies for the management, maintenance and operation of the convention center including but not limited to concessions, vehicle parking facilities or other related facilities," and to "[s]elect, employ and fix the compensation for a General Manager of the convention center and such staff of the Board, as it deems necessary." D.C. Code, §9-603(2) and (5). The General Manager must, inter alia, "[a]dminister all operating policies, rules and regulations adopted by the Board; ... [e]mploy personnel; ... and ...[p]erform such other duties as may be authorized by the Board for the effective and efficient management of the convention center." D.C. Code, §9-604(2), (3), and (5).

The Act indicates that the primary purpose of the Washington Convention Center (the "Center") is to provide additional sources of revenue for the District and expanded employment and business opportunities for District residents by enabling large conventions, trade shows, meetings, and exhibitions to be held in the District. As provided by the Act, the operations of the Center are governed by the Board, members of which are appointed by the Mayor of the District of Columbia ("Mayor") with the advice and consent of the Council of the District of Columbia (the "Council"). Members of the Board serve a term of three years and may not serve in excess of two consecutive terms. The Mayor designates the Chairman of the Board and may remove Board members for cause as specified by the Act.

The operating expenses of the Center are financed from the Center's operating revenue and an annual transfer payment from the District's General Fund. The transfer payment includes a dedicated portion of the District's hotel occupancy tax receipts. The amount of the annual transfer payment is included specifically in the General Fund appropriation request. Under section 6 of the Act, any operating profits of the Center in excess of \$500,000, exclusive of certain depreciation expense, are required to be transferred to the general revenues of the District within 120 days after the end of each fiscal year.

Construction of the Center's physical facility was financed through a long-term U.S. Treasury loan to the District's Capital Projects Fund, with the General Fund paying the debt service. Site-acquisition costs were financed by the

Center's operating budget and a short-term loan from the Capital Projects Fund, which the Center repaid with tax revenues allocated for that purpose and for the Center's operating costs during its early years.

As required by the Act, the Center's budget is submitted to the Mayor for inclusion in the District's annual budget to be approved by the Council. In addition, the Center's financial records are subject to annual audit by the Mayor and the Auditor of the District of Columbia. The Center is not subject to federal income taxation and does not pay District sales tax.

The Center has independent procurement and personnel authority. Rules and regulations of the Board concerning those and other matters are required to be promulgated in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, §1-501 et seq.).

Employees of the Center are treated as public employees under the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and workers compensation laws. Pursuant to section 11 of the Act, as amended by D.C. Law 5-54, §2 (March 14, 1984), the Center's employees are subject to the District's labor-management relations law governing public employees.

The Plan is a defined benefit pension plan established and maintained by the Center for its employees.* The Plan is administered by trustees appointed by the Center's Board of Directors (Plan Document, Article XIII) and is funded by mandatory employee contributions in the form of salary reduction and by employer contributions (Plan Document, Article IV).

Section 4(b)(1) of ERISA excludes governmental plans from coverage by title I of ERISA. Section 3(32) of ERISA defines the term "governmental plan" to include "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." Section 3(10) of ERISA defines the term "State" to include the District of Columbia.

Based on the facts, representations, and documents provided, it is the view of the Department of Labor that the Center is a governmental agency or instrumentality within the meaning of ERISA section 3(32) and that the Plan is a governmental plan within the meaning of that section. Accordingly, the Plan is excluded from ERISA title I coverage by reason of section 4(b)(1) of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions. We wish to note that nothing in this letter constitutes a conclusion as to any particular tax treatment under the Internal Revenue Code.

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations

* The "Plan Document" included in the submission indicates, in section 2.15, that under certain conditions the Plan may be adopted by a "subsidiary or affiliated corporation" of the Center. A member of your firm advised by telephone July 7, 1989, that the Plan has covered only employees of the Center. Accordingly, the conclusions reached by the Department of Labor in this letter are based in part on that representation. The Department offers no views in this letter regarding the status of the Plan under title I of ERISA in the event the Plan should cover persons not employed by the Center.