



March 24, 1992

Mr. Ernest J. Korpela  
Administrator  
Cooperative Educational Service  
Agency No. 12  
301 Thirteenth Avenue East  
Ashland, Wisconsin 54806

**92-10A**  
ERISA SECTION  
3(32)

Dear Mr. Korpela:

This is in reply to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Northern Wisconsin Schools Employee Benefit Plan and Trust (the Trust) is a "governmental plan" within the meaning of section 3(32) of title I of ERISA and, therefore, is excluded by section 4(b)(1) from coverage under that title.

You advise that the Trust was established pursuant to a trust agreement, effective March 1, 1984, between the Northern Wisconsin Schools Association (the Association) and several individuals as Trustees. You further advise that the Trustees are appointed by the Association. The trust agreement states that the Association desired "to establish a trust fund for the purpose of providing health and welfare benefits for eligible employees of members of the Association and their eligible dependents. ..." Eligible employers adopt the Trust by signing a participation agreement with the Trustees. The term "Employer" is defined in Article I, Section 1.4 of the trust agreement as follows:

1.4 Employer. Any Wisconsin School District or Wisconsin Cooperative Educational Service Agency which is a member of the [Association] and which:

- (a) on or after the effective day of this Plan has a Participation Agreement with the Trustees requiring periodic contributions to be made to the Plan;
  - (b) signs a copy of this Agreement or a Participation Agreement;
  - (c) is accepted for participation in the Plan by the Trustees;
- and

(d) makes contributions to the Plan as required by the Participation Agreement.

Article III, Section 1 of the Constitution of the Association provides that, "[t]he members of this organization shall be any organization, school district, or cooperative approved for membership by a majority of the association members." You further advise that all the members of the Association are public school districts or cooperative educational service agencies organized under state law. School districts are organized under Chapter 115, Wisconsin Statutes, and cooperative educational service agencies are organized under Chapter 116, Wisconsin Statutes.

Title I of ERISA generally covers any employee welfare benefit plan described in section 3(1) of that title or any employee pension benefit plan described in section 3(2) of the title. However, section 4(b)(1) excludes from coverage under the title any governmental plan described in section 3(32). The term "governmental plan" is defined in section 3(32) of title I of ERISA 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."

Based on the facts and representations you submitted, as well as the documents accompanying your request, it is the position of the Department of Labor (the Department) that the public school districts and the cooperative educational service agencies which are members of the Association are governmental entities described in section 3(32) of title I of ERISA. Accordingly, the Trust, established and maintained by the Association on behalf of its members, would constitute a governmental plan within the meaning of that section and thus be excepted from the provisions of title I of ERISA pursuant to section 4(b)(1) as long as membership in the Association is limited to public school districts and cooperative educational service agencies. If, under Article III, Section 1 of the Association's Constitution, membership in the Association is extended to any entity other than a public school district or cooperative educational service agency, the Department would have to consider its position on the status of the Trust under title I of ERISA in light of those facts and circumstances.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. This letter relates solely to application of the provisions of title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Internal Revenue Code.

Sincerely,

Robert J. Doyle  
Director of Regulations  
and Interpretations