



November 28, 1994

Ms. Ruth L. Flemister  
Constangy, Brooks & Smith  
Suite 2400  
230 Peachtree Street, N.W.  
Atlanta, Georgia 30303-1557

94-38A  
ERISA SECTION  
3(32)

Dear Ms. Flemister:

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 five benefit programs<sup>1</sup> offered by the Southeast Alabama Gas District (the Gas District) to its employees are governmental plans within the meaning of section 3(32) of Title I of ERISA and, therefore, are excluded from coverage under that title. Participation in each of the five benefit programs is limited to employees of the Gas District.

Title I of ERISA generally applies to any employee welfare benefit plan within the meaning of section 3(1) of that title or any employee pension benefit plan within the meaning of section 3(2) of that title. However, section 4(b) of Title I of ERISA identifies certain employee benefit plans that are expressly excluded from coverage under Title I, including, in particular, any employee benefit plan that is a governmental plan within the meaning of section 3(32) of Title I. The term "governmental plan" is defined in section 3(32) to include, among others:

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 an agency or instrumentality of the foregoing.

You advise that the Gas District, which was created in 1951, operates pursuant to Section 11-50-390 of the Code of Alabama. The Gas District provides natural gas to each of fourteen municipalities<sup>2</sup> and to such other customers as the Gas District determines to serve.

The Gas District is operated by a Board of Directors (the Board). Each of the governing bodies of the fourteen municipalities elects one member to serve on the Board. Under the provisions of state law, the term of each Director is the same as that of the mayor of the municipality that elected that Director (Ala Code § 11-50-393).

The Gas District has the right of eminent domain (Ala. Code § 11-50-396 (17)) and the right to use public rights-of-way (Ala. Code § 11-50-400)), and it may issue bonds exempt from state and local taxation (Ala. Code § 11-50-412). The income and property of the Gas District is similarly exempt from state and local taxation (Ala. Code § 11-50-412). However, the bonds and other obligations of the Gas District are not the debts or obligations of the state or the municipalities that are members of the Gas District and are payable solely from the revenues of the Gas District (Ala. Code § 11-50-409). The Gas District is also authorized to issue rules and regulations relating to the installation, connection, maintenance and servicing of gas fixtures, pipes, and appliances on properties it serves and to license individuals to do such work (Ala. Code § 11-50-401), and its rates and charges are exempt from the jurisdiction and regulation of the Alabama Public Service Commission (Ala. Code § 11-5-416). The material you submitted also indicates that the Gas District has been accorded the status of a governmental entity by other Federal authorities, such as the Social Security Administration and the National Labor Relations Board.

Based on the information presented, it is the position of the Department of Labor (the Department) that the Gas District is an agency or instrumentality described in section 3(32). The Gas District was organized under state law by a group of municipalities and is under the control of those municipalities. Accordingly, it is the position of the Department that the five benefit programs established by the Gas District, which provide benefits only to employees of the Gas District, are governmental plans within the meaning of section 3(32) of Title I of ERISA and are excluded under section 4(b)(1) from coverage under that title.

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.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> You identify the five benefit programs as the group health care; accidental death and dismemberment; long-term disability; life; and retirement income plans.

<sup>2</sup> The fourteen municipalities are the City of Abbeville, the City of Andalusia, the City of Brundidge, the City of Dothan, the City of Elba, the City of Enterprise, the City of Eufaula, the City of Port Deposit, the City of Greenville, the City of Headland, the City of Luverne, the City of Opp, the City of Ozark, and the City of Troy.