

**U.S. Department of Labor**

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



June 16, 1995

95-11A  
ERISA SECTION 3(32), 4(b)(1)

Mr. Richard A. Gilbert  
Orrick, Herrington & Sutcliffe  
Old Federal Reserve Bank Building  
400 Sansome Street  
San Francisco, California 94111-3143

Dear Mr. Gilbert:

This is in response to your correspondence concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the California State Teachers' Retirement System (hereinafter, the CSTRS).<sup>1</sup> Specifically, you requested the views of the Department of Labor (the Department) as to whether the status of CSTRS as a "governmental plan" within the meaning of section 3(32) and section 4(b)(1) of Title I of ERISA would be adversely affected by accepting contributions pursuant to state law from a certain "charter school" operation (i.e., Charter School No. 17), assuming those contributions were made on behalf of its employees for the limited period that the school's charter was in effect and were made so as to allow its employees to participate in CSTRS for only that same period.

Your correspondence and the materials you enclose contain the following facts and representations. You represent that CSTRS is a defined benefit pension plan that was established and is administered pursuant to California statute.<sup>2</sup> You further represent that the CSTRS accepts contributions from participating employers (i.e., public schools in California counties and school districts) on behalf of their participating employees, who consist exclusively of teachers and certain other personnel employed by California's public educational institutions. You represent that the CSTRS currently covers over 312,000 active participants in over 1,200 county and school district educational systems in California. Under the terms of CSTRS, each participating employer contributes to CSTRS, and the CSTRS pays defined benefit pensions according to conditions set by statute.

In 1992, California enacted its Charter Schools Act.<sup>3</sup> Your submission explains the California Charter Schools Act and the relationship of charter schools to the state educational system. See California Education Code §§ 47600 through 47616. You state that a total of 100 charter schools may receive charters to operate in California. Each such charter school must be chartered by a school district within whose jurisdiction it operates.

While a school's charter is in effect, the school district responsible for issuing the charter also generally oversees the school's operations. Not unlike public schools, charter schools are closely associated with the public educational process. In state legislation pertaining to charter schools, charter schools are deemed "school districts" for certain

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<sup>1</sup> We note that your request concerns solely the effect that inclusion of Charter School 17 employees would have on the CSTRS and assumes, without significant discussion of the issue, that CSTRS in its current form (as described herein), constitutes a "governmental plan" within the meaning of section 3(32) of Title I of ERISA.

<sup>2</sup> See California Education Code §§ 22000 through 24900.

<sup>3</sup> See California Education Code § 47600 et seq.

purposes, including apparently for receipt of state funds. See California Educational Code § 47612(c). In fact, California provides almost all funds for charter school operations, subject to the chartering school district's control of the charter school's policies and procedures. First, the school district supervises the school's adherence to its charter. Second, the school district reviews the charter school's annual financial and programmatic audits. Third, the school district must approve any revisions of the school's charter.

However, as you explain, a school district's oversight of a charter school is significantly different from its oversight of the public schools within its jurisdiction. First, as compared with public schools, relevant statutes give charter schools greater independence from school districts. Accordingly, it appears that no school district supervises a charter school's day-to-day operations. Rather, if an individual or group petitioning a school district for establishment of a charter school meets that school district's standards<sup>4</sup> (and applicable standards of the California educational system), the school district may approve a charter that ordinarily lasts five years but is subject to revocation by the school district at any time. After five years, the school district must decide whether to renew each school's charter for an additional five-year period. Second, charter schools are permitted to develop their own curriculum and methods for teaching with a view toward increasing learning opportunities for all students, including students whose former public schools showed them to be low achievers.

Among other matters, the Charter Schools Act permits a charter school to elect whether its employees are permitted to participate in the CSTRS<sup>5</sup> If a charter school makes an election for its employees in favor of CSTRS participation, all its qualified employees are covered by, and participate in, the CSTRS. Further, if the charter school elects CSTRS participation for its employees, all CSTRS rules apply as if the charter school were a public school in the school district granting its charter. A charter school so electing is required to make CSTRS contributions from the funds it receives, which are primarily provided by the State of California.

Your correspondence concerns employee benefits (i.e., pension contributions and the resulting accrued retirement benefits) for only a single charter school, which is Charter School No. 17. Its charter was granted in 1992 by the Los Angeles Unified School District (hereinafter, the School District) after the School District received a petition from Edutrain, Inc.<sup>6</sup> That charter was revoked by the School District in 1994.<sup>7</sup> While its charter was in effect, Charter School No. 17 served as an alternative source of education for students residing in the School District who dropped out of, or were expelled by, their public schools.

Although CSTRS has not yet acted to permit any employee of Charter School No. 17 to participate in its program of retirement benefits, the school made the required election in favor of participation. You state that, as a result, CSTRS holds checks that Edutrain, Inc. submitted to CSTRS on behalf of eligible employees for the period during which Charter School No. 17 held a charter from the School District.<sup>8</sup> Further you represent that as compared with

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<sup>4</sup> Specific standards apply to the charter school's operating methods, hiring practices, accounting methods, and required duties to safeguard the health and safety of its students. The school district must also approve the charter school's choice of individuals to serve on its governing board and its procedures for filling any board vacancies.

<sup>5</sup> See California Education Code § 47611 et seq.

<sup>6</sup> Materials you provided describing Edutrain, Inc. indicate that it intends to operate as a nonprofit corporation.

<sup>7</sup> Nothing in your submission suggests that the school's charter was, or could be, subsequently reinstated.

<sup>8</sup> CSTRS proposes to accept checks from Edutrain, Inc. that it now holds as contributions, but it recognizes that it cannot allow the affected employees to accrue benefits in CSTRS with respect to Charter School No. 17

other 300,000 active participants in CSTRS, your request concerns at most 120 full-time employees and 30 part-time employees of Charter School No. 17.<sup>9</sup>

In your efforts to assure that the status of CSTRS as a "governmental plan" will not be adversely affected by Charter School No. 17's participation therein, you asked both the Department and the Internal Revenue Service (IRS) for guidance. You indicate that IRS issued a letter to CSTRS on January 23, 1995, finding that CSTRS would continue to be a "governmental plan" within the meaning of Code section 414(d) if it allows eligible employees of Charter School No. 17 to participate in its retirement benefits for the period before the School District revoked that school's charter.

ERISA section 4(b)(1) excludes from coverage under Title I of ERISA any plan that is a "governmental plan," and section 3(32) defines the term "governmental plan," in pertinent part, as "a plan established or maintained for its employees by . . . the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. . . ." In view of the facts and representation that you presented concerning CSTRS, the School District, and Charter School No. 17, (particularly, the close relationship between the School District and Charter School No. 17) and in view of the limited duration of CSTRS coverage for Charter School No. 17 employees, we conclude that the status of CSTRS as a "governmental plan" would not be adversely affected by accepting contributions that allow Charter School No. 17's employees to participate for the period during which the School District allowed that school's charter to remain in effect.

This letter constitutes an advisory opinion. It is issued under ERISA Procedure 76-1, including section 10 thereof concerning the effect of issuing advisory opinions. This letter relates solely to the application of the provisions of Title I of ERISA and is not determinative of any particular tax treatment under the Internal Revenue Code.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations and Interpretations

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employment after the effective date of that school's charter revocation. You do not specify whether Edutrain, Inc. continues to operate any school past the date of the charter revocation. However, if that were the case, the opinions expressed in this letter would not apply to any of its operations past the date on which Charter School No. 17's charter was revoked by the School District.

<sup>9</sup> Further, you project that, if CSTRS rejects the contributions that you hold from Charter School No. 17, at most 15 teachers from Charter School No. 17 who apparently had previously participated in CSTRS retirement benefits will become "inactive" CSTRS members.