

**U.S. Department of Labor**

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



June 26, 1995

95-14A

Ms. Barbara E. Tretheway  
Gray, Plant, Mooty, Mooty & Bennett, P.A.  
3400 City Center  
33 South Sixth Street  
Minneapolis, Minnesota 55402

Dear Ms. Tretheway:

This is in response to your request for an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Minnesota Public Employees' Insurance Plan (PEIP). Specifically, you request an advisory opinion to determine whether PEIP constitutes a "governmental plan," as defined in ERISA section 3(32) and is, therefore, excepted from coverage by Title I of ERISA.

Your request and related correspondence contain the following facts and representations. PEIP was established pursuant to Minn. Stat. Ann. § 43A.316 (West 1988 and 1989 Supplement). The legislation was intended to create a statewide program through which employees of Minnesota's political subdivisions (i.e., school districts, cities, counties, and towns) and certain other eligible persons could obtain medical, dental, and life insurance on a cost-effective basis. Participation in PEIP is limited by statute to "eligible employers."

"Eligible employer" is defined, at Minn. Stat. § 43A.316, subd. 2(c), to include: (1) various political subdivisions of Minnesota (e.g., towns, counties, cities, school districts, and other statutorily established state, local and regional governmental entities); (2) "an exclusive representative of employees," which is defined at Minn. Stat. § 179A.03, subd. 8, as an employee organization that has been certified by Minnesota's Commissioner of Mediation Services to meet and negotiate with the employer on behalf of all "employees" in the appropriate unit; or (3) another public employer approved by the Commissioner of Employee Relations. The term "employee" is defined at Minn. Stat. § 43A.316, subd. 2(b), as:

- (1) a person who is a public employee within the definition of section 179A.03, subdivision 14, who is insurance eligible and is employed by an eligible employer;
- (2) an elected public official of an eligible employer who is insurance eligible; or
- (3) a person employed by a labor organization or employee association certified as an exclusive representative of employees of an eligible employer or by another public employer approved by the commissioner, so long as the plan meets the requirements of a governmental plan under United States Code, title 29, section 1002(32).

PEIP is administered by the State of Minnesota through the Commissioner of the Department of Employee Relations (the Commissioner). The Commissioner, pursuant to the statute, is required to consult with a labor-management committee (the Committee) on major decisions affecting PEIP. As specified by statute, the Committee consists of ten members, five who represent employers and five who represent employees, including retirees. The Commissioner appoints Committee members.

Health and medical benefits provided by PEIP are self-insured up to a stop-loss limit. An insurance trust fund, within the State's treasury, was established to hold premiums collected by PEIP and to pay administrative (and other related service) costs, insurance premiums, and approved claims. The amount of premium payments, including administration fees, payable to PEIP are established by the Commissioner; however the portions of premiums payable by employers and employees, respectively, are generally determined by collective bargaining and, therefore, may vary from employer to employer.

According to your submission, approximately 183,000 public employees are currently eligible to participate in PEIP and approximately 253 common-law employees of the "exclusive representatives" could become eligible to participate in PEIP, if the "exclusive representatives" elect to participate in PEIP. If all eligible common-law employees of "exclusive representatives" participated in PEIP, their participation would be, and is expected to be consistently, within the range of 0.14 of one percent of the total number of individuals expected to be covered by PEIP.

Pursuant to ERISA section 4(b), provisions of Title I of ERISA "shall not apply to any employee benefit plan if -- (1) such plan is a governmental plan (as defined in section 3(32)); . . ." ERISA section 3(32), in pertinent part, defines the term "governmental plan" as "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 information submitted in connection with your request, to the extent that PEIP participation is limited to governmental employers and their employees, PEIP, being established and maintained by Minnesota and various political subdivisions thereof to provide medical and related benefits to governmental employees of various Minnesota political subdivisions, clearly constitutes a "governmental plan" within the meaning of section 3(32). The issue raised by your request, therefore, is whether PEIP's status as a governmental plan would be adversely affected by the participation of employees of "exclusive representatives" and by receipt by PEIP of contributions on their behalf.

Based on the information you submitted, it is the opinion of the Department of Labor that PEIP's status as a "governmental plan" within the meaning of section 3(32) would not be adversely affected by the participation in PEIP of common-law employees of "exclusive representatives." In our view it is consonant with the intended scope and purposes of the "governmental plan" exception to treat PEIP as a governmental plan within the meaning of section 3(32), despite its inclusion of this extremely small number of non-governmental employees, particularly inasmuch as the non-governmental employer's activities consist exclusively of representing employees of the governmental entities in regard to aspects of their employment with their governmental employer. Accordingly, pursuant to section 4(b)(1), PEIP, as a "governmental plan" within the meaning of section 3(32), is excepted from the provisions of Title I of ERISA.

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