

U.S. Department of Labor

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



June 26, 1995

95-15A

Mr. Dennis J. Murphy
Schwartz, Steinsapir, Dohrman & Sommers
3850 Wilshire Boulevard, Suite 1820
Los Angeles, California 90010-2594

Dear Mr. Murphy:

This is in response to your request for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Central Valley Schools Health and Welfare Benefit Trust (the Trust). Specifically, you request an advisory opinion concerning whether the Trust constitutes a "governmental plan," as defined in section 3(32) of ERISA, and is, therefore, exempted from coverage under Title I of ERISA.

Your request and related correspondence contain the following facts and representations. The Trust was established pursuant to a trust agreement effective October 1, 1984, between various California public school districts and two unions, the California Teachers Association/National Education Association (CTA) and the California School Employees Association (CSEA). The purpose of the Trust is to provide a vehicle by which the participating employers may make contributions to the Central Valley Schools Health and Welfare Benefit Fund (the Fund) that are required under collective bargaining agreements between the public school districts and CTA and/or CSEA for the purpose of providing health and welfare benefits to current or retired employees of public school districts. It is not necessary for an employee to be covered by a collective bargaining agreement to receive benefits from the Trust so long as the employee is covered under a participation agreement between the Trust and the participating public school district. Administration of the Trust is vested in eight individuals who constitute the Trust's Board of Directors. Two directors are appointed by CTA and two are appointed by CSEA. The remaining four Directors are appointed by the participating school districts.

Most of the employers participating in the Trust are public school districts, which are political subdivisions of the respective California counties in which they are located. In accordance with the Agreement and Declaration of Trust as amended through September 30, 1989, however, employees of the Trust, CSEA, and CTA are also permitted to receive benefits from the Trust. You advise that, as of May 1, 1993, out of 10,987 individuals receiving benefits from the Trust, twelve are employees of the Trust itself or are beneficiaries of Trust employees, and 224 are employees of CSEA. There are no employees of CTA currently participating in the Trust.

Section 4(b) of Title I of ERISA provides that the provisions of that title "shall not apply to any employee benefit plan if -- (1) such plan is a governmental plan (as defined in section 3(32);" Section 3(32), in pertinent part, defines the term "governmental plan" to include "a plan established or maintained 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."

If participation in the Trust were limited to employees of the various school districts, the Trust would clearly be a governmental plan within the meaning of section 3(32). The school districts are agencies or instrumentalities or political subdivisions of state and local government, and the Trust was established and is maintained by those school

districts to provide health and welfare benefits to the employees of these governmental entities.¹ The real question posed by your request is whether the Trust's status as a governmental plan is adversely affected by the participation of Trust or CSEA employees and by the receipt by the Trust of contributions on their behalf.

Based on the information you submitted, it is the opinion of the Department of Labor (the Department) that the Trust's status as a governmental plan is not adversely affected by the participation in the Trust of the Trust or CSEA employees. In light of the extremely small number of non-governmental employees involved, in our view it is consonant with the intended scope and purposes of the "governmental plan" exception to treat the Trust as a governmental plan within the meaning of section 3(32) despite the inclusion of such non-governmental employees, particularly inasmuch as the activities of the non-governmental employers relate exclusively to representing the governmental employees in regard to aspects of their employment with their governmental employers or providing them with benefits secured as a result of such representation. Accordingly, pursuant to section 4(b)1, the Trust, as a "governmental plan" within the meaning of section 3(32), is exempted 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

¹ A plan may be recognized as a "governmental plan," although the governmental employer of the covered employees does not directly and unilaterally operate the plan, if the governmental employer is substantially involved in the plan and funds it for its employees and if the plan is administered (either solely or jointly with the governmental employer) by an "employee organization," within the meaning of section 3(4), of those employees who are the plan's participants.