

U.S. Department of Labor

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



November 8, 1995

95-27A
ERISA SECTION 3(32)

Ms. Mary M. Vanek
Director, Legislative and Member Services
Public Employees Retirement Association of Minnesota
Suite 200 -- Skyway Level
514 St. Peter Street
St. Paul, Minnesota 55102

Dear Ms. Vanek:

This responds to your request for an advisory opinion concerning the application of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Public Employees Defined Contribution Plan (the Plan), a pension benefit arrangement established under Minnesota Statutes Chapter 353D and administered by the Public Employees Retirement Association of Minnesota (hereinafter, PERA).¹ In specific, you ask whether the status of the Plan as a "governmental plan" under section 3(32) of ERISA would be adversely affected if the Plan were extended to cover employees of private ambulance services operating within Minnesota.

You advise that the Plan was first established by legislative enactment in 1987 to provide a defined contribution pension plan available, at that time, only to personnel of public and private ambulance services in Minnesota. The governing statutes were amended in 1990, however, to broaden the Plan's potential coverage by permitting certain local elected state officials to elect to participate. In their present form, the governing statutes extend eligibility under the Plan to:

an elected local government official of a governmental subdivision who elects to participate in the plan and who, for the elected service rendered to a governmental subdivision, is not a member of [PERA], and to basic and advanced life support emergency medical service personnel employed by or providing services for any public ambulance service or privately operated ambulance service that receives an operating subsidy from a governmental entity that elects to participate.

Minn. Stat. section 353D.01, Subd. 2.

The statutes further provide that "[e]ach public ambulance service or privately operated ambulance service with eligible personnel that receives an operating subsidy from a governmental entity may elect to participate in the

¹ PERA, which was established 1938, is a state agency that administers a number of pension plan arrangements, most of which appear to benefit solely governmental employees. It is operated by a nine-member board of trustees, which includes the state auditor who serves ex officio as a trustee on the board; five trustees who are appointed by Minnesota's governor to represent, respectively, Minnesota cities, counties, school boards, retired annuitants, and the general public; and three trustees who are elected by participants in the retirement benefits that PERA administers. PERA is charged by Minnesota statute with administering four separate pension funds: (1) a "basic plan" fund covering eligible public employees; (2) a fund for the benefit of members of local police and fire relief associations that have elected merger with PERA; (3) a fund covering police officers and firefighters who were not members of any local police relief association; and (4) the Plan, which is the subject of your request.

plan." Id., section 353D.02. An electing public or private ambulance service "shall fund benefits for its qualified personnel who individually elect to participate." Id., section 353D.03(b). In addition to such employer contributions, "[p]ersonnel who are paid for their services may elect to make member contributions in an amount not to exceed the service's contribution on their behalf." Id. All "[a]mbulance service contributions must be remitted on a regular basis to [PERA] together with any member contributions paid or withheld. Those contributions must be credited to the individual account of each participating member." Id., section 353D.04(b). A Minnesota board of investment is charged with the responsibility of investing the Plan's assets. Id., section 353D.05. The statutes further prescribe the benefits available to participants, id., section 353D.07, and provide "portability" for ambulance service personnel who change jobs among participating ambulance services. Id., section 353D.08. Further, the statutes provide that the Plan's operations are conditioned on obtaining from the Internal Revenue Service (hereinafter, IRS) assurance of its tax-qualified status under the Internal Revenue Code (hereinafter, the Code).

You represent that the Plan currently covers the personnel of fourteen ambulance services operating within Minnesota. You state that thirteen of these services are directly owned and governed by the municipalities within which they operate, and that the fourteenth service operates with delegated authority under the direct jurisdiction of the City Council of the city within which it operates.

You further state that the Plan currently has a total of approximately 3,700 participants, of whom 270 are employees of ambulance services. The balance of the Plan's participants, according to your representations, are elected local state officials. However, you represent that many other ambulance services that receive operating subsidies from governmental entities operate within Minnesota and that many of such services are privately owned, for-profit organizations. Although none of such privately owned entities have applied to participate in the Plan, you assert that the statutes as drafted would permit their participation, without any further permission from any governmental body, including PERA, and you request our views on the consequences to the Plan of such participation.

Title I of ERISA covers all employee pension benefit plans and employee welfare benefit plans. In general, a covered employee pension benefit plan includes any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to provide retirement income to employees of the employer or to members of an employee organization. Section 4(b)(1) of Title I of ERISA, however, excludes governmental plans from coverage under that title. The term "governmental plan" is defined in section 3(32) 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 the foregoing."

Based on the information you have provided, it is the view of the Department that many of the private ambulance services that are eligible to participate in the Plan, whose sole connection to government is the receipt of a governmental operating subsidy, are not governmental agencies or instrumentalities. Although the Plan in operation has apparently not yet covered any private sector employees, Minnesota law provides no assurance that this de facto limitation of coverage to governmental employees will continue.

Because we understand that the Plan, in operation, has not yet covered any private sector employees, we are of the opinion that the Plan, as currently operated, is a governmental plan. It is also the opinion of the Department that the status of the Plan as a governmental plan should not be affected by the participation of a de minimis number of private sector employees. However, if the Plan were extended, as would apparently be permissible under its authorizing legislation, to cover more than a de minimis number of private sector employees, it would be considered to be a pension plan subject to Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and, accordingly, 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