

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



MAR 4 1985

85-10A
Sec. 3(32), 4(b)(1)

Mr. Stephen W. Burke
Clark & Stant, P.C.
900 First & Merchants Bank Building
One Columbus Center
Virginia Beach, Virginia 23462

Dear Mr. Burke:

This is in reply to your letter of February 25, 1982, and additional documents submitted April 15, 1982, and May 26, 1982, concerning applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Transit Employees of Tidewater Disability and Retirement Allowance Plan (the Tidewater Plan). Specifically, you request the Department of Labor (the Department) to issue an advisory opinion stating that the Tidewater Plan is a governmental plan as defined in section 3(32) of ERISA and is thereby excluded by section 4(b)(1) of ERISA from coverage by title I.

You state that the Transit Employees of Virginia Disability and Retirement Allowance Plan (the Virginia Plan) received ERISA Opinion 81-14A, dated January 27, 1981. In ERISA Opinion 81-14A the Department advised that the Virginia Plan met the definition of a governmental plan in ERISA section 3(32). The Virginia Plan subsequently divided into two separate plans on June 1, 1981. The separate plans are the Tidewater Plan and the Old Dominion Transit Employees Disability and Retirement Allowance Plan. The purpose in dividing the Virginia Plan was to allow two geographically separate employers to deal separately with their respective union locals regarding the terms of pensions for employees. You also submitted a determination letter from the Internal Revenue Service dated May 10, 1982, ruling favorably on the Tidewater Plan's application for qualification. While the Tidewater Plan's Internal Revenue Service ruling did not rely on, specifically, or make any express determination of the Tidewater Plan's section 3(32) status, the Tidewater Plan's application for the qualification asserted that it was a governmental plan.

Additionally, you state that the facts and circumstances of the Tidewater Plan are virtually the same as those under which the Department issued ERISA Opinion 81-14A (referred to above). For example, the Tidewater Plan now has four members on its Pension Committee. Two members represent Transit Management, an entity the Department identified as a government instrumentality in ERISA Opinion 81-14A. The other two members represent Local Union 1177,

Amalgamated Transit Union. Previously, under the Virginia Plan, the Pension Committee had eight members: two each from two local unions and two each from two government instrumentalities. Based on the information you supplied, including the representations that the Transit Management Company makes contributions to the Tidewater Plan and appoints an equal number of representatives to the Pension Committee, the Department concludes that the Tidewater Plan meets the definition of a governmental plan in ERISA section 3(32) and is excluded from ERISA title I requirements by ERISA section 4(b)(1).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel

Acting Assistant Administrator for Regulations and Interpretations