

**U.S. Department of Labor**

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



MAR 26 1985

85-13A  
Sec. 3(32), 4(b)(1)

Mr. Z. B. Hill  
Finance Director  
City of Raleigh  
P.O. Box 590  
Raleigh, North Carolina 27602

Dear Mr. Hill:

This is in reply to your letter of June 7, 1984, requesting an advisory opinion concerning whether requirements of title I of the Employee Retirement Income Security Act of 1974 (ERISA) are applicable to the Medical Benefit Trust (the Trust) established by the City of Raleigh, North Carolina, to implement its Medical Benefits Plan (the Plan) for its employees. Specifically, you request an advisory opinion stating the governmental plan exclusion in section 4(b)(1) of title I of ERISA precludes the applicability of reporting and disclosure requirements and other requirements of title I of ERISA.

Your correspondence contains the following facts and representations. The City of Raleigh unilaterally established the Plan some years ago. The Plan is administered by Blue Cross and Blue Shield of North Carolina (Blue Cross and Blue Shield) on a cost plus administrative fee basis to provide standard hospitalization benefits to individuals currently employed by the City of Raleigh, to individuals retired from employment with the City of Raleigh, and to their eligible dependents.

The City of Raleigh established the Trust by unilateral act of its City Council to be effective August 1, 1982. The Internal Revenue Service issued a determination letter to the Trust dated February 2, 1984, stating the Trust met the requirements for exemption from Federal income tax as a trust described in Internal Revenue Code section 501(c)(9). The Trust is used as a conduit for funds paid to Blue Cross and Blue Shield to cover benefits provided under the Plan. With the exception of funds contributed to the Trust by individuals who are or have been employed by the City of Raleigh solely to cover the cost of benefits for their eligible dependents, the City of Raleigh is the sole source of funds for the Trust. Trust funds are held in a trust account with Northwestern Bank. The City of Raleigh is ultimately responsible for all hospitalization benefits promised employees under the Plan, and payment of benefits promised by the Plan is not limited to assets in the Trust.

ERISA section 4(b)(1) excludes governmental plans from coverage. 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 any State or political subdivision thereof ...." Based on the factual situation you describe, there is sufficient reason to conclude the City of Raleigh has established and maintained a governmental plan for its employees. Accordingly, insofar as the Plan and Trust cover only individuals currently or formerly employed by the City of Raleigh and their dependents and insofar as funding for the Plan and Trust is derived solely from the City of Raleigh and from individuals currently or formerly employed by the City of Raleigh and covered by the Plan, the Department views the arrangement you describe as a governmental plan excluded from title I of ERISA.<sup>1</sup>

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

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<sup>1</sup> It should be noted that this conclusion is solely for the purposes of title I of ERISA and is not intended to affect the status of the Trust under section 501(c)(9) of the Internal Revenue Code relating to voluntary employees' beneficiary associations.