

**U.S. Department of Labor**

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



FEB 3 1986

86-06A  
Sec.

Mr. J. Paul Jacobson  
Quarles & Brady  
780 North Water Street  
Milwaukee, Wisconsin 53202-3589

Dear Mr. Jacobson:

This is in reply to your letter of February 13, 1984, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether a benefit program provided by the Firemen Relief Association of the City of Milwaukee (the Association) is a governmental plan within the meaning of section 3(32) of title I of ERISA and therefore is exempt from coverage under that title pursuant to section 4(b)(1) of title I of ERISA.

You advise that section 20.18 of the Charter of the City of Milwaukee created the Association in 1885 and provides for direct annual subsidy of the Association by the City of Milwaukee. The Association operates pursuant to State statute authorizing formation of a relief association in any city by members of its paid fire department (Wis. Stat. §213.10). The Association's sole purpose is to provide a benefit upon the death of a member. Membership is voluntary but limited to current and former employees of the fire department of the City of Milwaukee. The officers of the Association must be active members of the Association and are elected by the membership. The Association's sources of income also include member dues, initiation fees, and investments. In the last completed fiscal year, the direct subsidy accounted for \$52,006 of the total revenues of \$206,369 of the Association. Death benefits are set by the officers.

Section 3(32) defines the term "governmental plan" to include, in pertinent part, "... 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 ...." Because the Association is authorized by State statute and the municipal charter, has only public employees as members, and, as authorized by charter, there is continuing direct subsidy by the City of Milwaukee, the Association's program of benefits constitutes a governmental plan within the meaning of section 3(32) of ERISA. Accordingly, the Association's death benefit program would be exempt from coverage under title I of ERISA as a governmental plan pursuant to section 4(b)(1) of ERISA.

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  
Assistant Administrator for Regulations and Interpretations