

U.S. Department of Labor

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



SEP 9 1986

86-22A
Sec.

Mr. Steven Bloom
Kaplan, Sicking & Bloom, P.A.
1675 Palm Beach Lakes Blvd.
Suite 200 Forum III
West Palm Beach, Florida 33401

Dear Mr. Bloom:

This is in reply to your request for an advisory opinion as to whether the West Palm Beach Firefighters Benefit Fund (the Fund) is a "governmental plan" within the meaning of section 3(32) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and is, therefore, excluded from coverage under title I of ERISA pursuant to section 4(b)(1) thereof.

Your correspondence and the accompanying documents contain the following facts and representations. The City of West Palm Beach (the City) is a political subdivision of the State of Florida. Local 727 of the International Association of Firefighters, AFL-CIO (Local 727) is the exclusive bargaining representative for all employees of the West Palm Beach Fire Department in the bargaining unit certified by the Public Employees Relations Commission. Pursuant to Article 27, Section 2 of the Agreement between the City and Local 727, (the collective bargaining agreement), amendments were provided to the collective bargaining agreement, Section 6 of which provides for the establishment of a health insurance plan with benefits which are reasonably comparable to or better than the health insurance program sponsored by the City. The Fund was established to provide such benefits. Participation is mandatory for bargaining unit employees and is optional for all non-bargaining unit employees who are members of Local 727. The Fund is operated in accordance with an Agreement and Declaration of Trust, (the trust agreement) effective March 1, 1985.

You indicate that benefits for employees are funded entirely by the City while dependent coverage is funded by both City and employee contributions. Specifically, the City contributes \$88.35 to the Fund per month per employee for health coverage, and \$2.40 per month per employee for life insurance coverage. Currently, each employee who desires dependent coverage contributes \$79.00 per month while the City contributes \$167.37 per month per such employee.

Retirees are eligible to be covered for benefits under the Fund at the same rates charged by the Fund to cover active employees at no cost to the City. In this regard, you indicate that currently

there is only one retiree covered for benefits under the Fund in comparison to approximately 140 active bargaining unit employees covered for benefits.

Pursuant to the trust agreement, there are five trustees of the Fund who currently are all officers of Local 727 (Article III, Section 3.1). Further, there are four alternate trustees of the Fund who are members of Local 727's executive board (Article III, Section 3.2). The term of office for all trustees is coincident with their term of office as a union officer or member of Local 727's executive board and each such trustee or alternate trustee is automatically removed at such time as he or she ceases to hold such office (Article III, Section 3.3). The board of trustees is responsible for, among other things, receiving contributions, paying expenses, paying benefits, managing and investing Fund assets, and adopting plan provisions and amendments thereto (Article V). The City does not appoint trustees or otherwise participate in the day-to-day operations of the Fund. Beyond being a party to the collective bargaining agreement, pursuant to which the Fund was established, the City's involvement with the Fund is limited to making contributions to the Fund at the same rate and in the same manner as it does for its non-Fire Department employees who participate in the City-sponsored health plan and the right to review, upon request, any records related to the Fund, except employee medical information, to the extent permitted by law (collective bargaining agreement amendments, Sec. 6).

We note that the trust agreement contains provisions which would permit entities other than the City of West Palm Beach and Local 727 to become parties to the trust agreement for the purpose of providing benefits to their employees. Specifically, Article IX, Section 9.3 of the trust agreement provides that "[t]he Board of Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Board of Trustees shall determine..." and Article IX, Section 9.5 of the trust agreement permits the board of trustees to merge the Trust Fund "with any other trust fund established for similar purposes as this Trust Fund..." Article I, Section 1.10 of the trust agreement defines "employee" for the purpose of receiving benefits through the Fund, to include: (1) any employee with respect to whose employment an employer is required to make contributions to the Fund in accordance with a collective bargaining agreement; (2) officers and salaried or hourly employees of an employer and of Local 727, its state affiliate or International parent body accepted by the Fund's trustees; (3) any employee of the Fund or any other trust fund established pursuant to a collective bargaining agreement with Local 727; and (4) any person that is represented by or under jurisdiction of Local 727, employed by a governmental unit or agency and on whose behalf payment of contributions are made to the Fund. The term "employer" is defined in Article I, Section 1.11 of the trust agreement to include: (1) all employers, including the City of West Palm Beach, that are required by a collective bargaining agreement with Local 727 to make contributions to the Fund on behalf of their employees represented by Local 727; (2) other employers who, while not recognizing Local 727 as the bargaining representative of their employees, are required to make contributions to the Fund on behalf of their employees; (3)

Local 727, for the purpose of covering its employees; and (4) the board of trustees of the Fund or any other trust fund established pursuant to a collective bargaining agreement with Local 727, for the purpose of covering trust fund employees with plan benefits.

With regard to the above provisions, you represent that coverage by the Fund has not, in fact, been extended to the employees of any employers other than the City and no employees are eligible to receive benefits under the Fund other than the active and retired bargaining unit employees of the West Palm Beach Fire Department represented by Local 727. While officers and executive board members of Local 727, and members of the board of trustees and their alternates are covered by the trust agreement, you represent that, with the exception of the president of Local 727, those persons are all active members of the bargaining unit and employees of the City and contributions are made for them on the same basis as for other active members of the bargaining unit. The president of Local 727 is a retired fire fighter employee of West Palm Beach and contributions made to the Fund are fully paid by the president at the rates to cover retirees as previously discussed herein. You indicate further that there are no contributions being made to the Fund to cover employees of Local 727, employees or officers of Local 727's state affiliate or its parent body, or employees or officers of the Fund other than the board of trustees and its alternates, discussed above, who are employees or retired employees of the City.

Section 4(b)(1) of title I of ERISA excludes from coverage under that title any governmental plan described in section 3(32) of ERISA. 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...."

It is the view of the Department of Labor (the Department) that the term "governmental plan" as defined in ERISA section 3(32) is not limited to plans established by the unilateral action of employers which are governmental agencies. In this regard, the Department has interpreted the term "governmental plan" to include plans established or maintained pursuant to a collective bargaining agreement between a governmental entity and a labor union where such plans are funded by and cover only employees of governmental entities.

On the basis of the facts and representations contained in your correspondence and related documents, it is the view of the Department that, because the Fund covers only active and retired employees of the City and their dependents, and receives substantial funding from the City, the Fund was established and is maintained by the City of West Palm Beach, a political subdivision of the State of Florida, for its employees. Accordingly, the Fund constitutes a "governmental plan" within the meaning of section 3(32) of title I of ERISA and thus is not subject to the provisions of title I of ERISA pursuant to ERISA section 4(b)(1). It should be noted, however,

that to the extent participation in the Fund is extended to include employees or former employees of employers other than the City of West Palm Beach or the Fund is merged with any other trust fund, as permitted under the trust agreement, the Department's position concerning the status of the Fund as a governmental plan may be affected.

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