

U.S. Department of Labor

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



SEP 9 1986

86-24A
Sec.

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

Dear Mr. Bloom:

This is in reply to your request for an advisory opinion as to whether the Miami Fire Fighters Insurance Trust Fund (the Fund) constitutes 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 Miami (the City) is a political subdivision of the State of Florida. Local 587 of the International Association of Fire Fighters AFL-CIO (Local 587) is the exclusive bargaining representative for all employees of the Miami Fire Department in the bargaining unit covering certain delineated job classifications. Pursuant to the Agreement between the City and Local 587 (the collective bargaining agreement), group health, life, and accidental death and dismemberment benefits are provided to all active and retired bargaining unit employees who are members of Local 587, and to management or supervisory non-bargaining unit personnel who elect such coverage and who are members of Local 587, (Art. 17, Secs. 17.3, 17.5). The Fund was established for the purpose of providing such benefits. The Fund is operated in accordance with an Agreement and Declaration of Trust (the trust agreement).

Benefits under the Fund for employees are funded primarily by the City while dependent coverage is funded by both City and employee contributions. Specifically, with respect to life insurance benefits for employees, the City contributes the entire amount required in the amount of \$11.39 per month per employee. With respect to health insurance benefits for employees, the City contributes \$61.40 per month per employee while each employee contributes \$15.35 per month. For each employee who elects dependent health insurance coverage, the City contributes \$73.43 per month and each such employee contributes \$62.65 per month.

Pursuant to the collective bargaining agreement, retired bargaining unit employees who are also Local 587 members are eligible to participate in the Fund (Art. 17, Sec.17.3). Of the 948 participants covered under the Fund for benefits, approximately 305 are retirees. Life insurance benefits for retirees are funded entirely by the retirees with contribution rates varying with each retiree's date of retirement. Retiree health insurance benefits are funded almost entirely by the retirees with the City contributing \$9.30 per month per retiree to the Fund and each retiree contributing \$76.50 per month. If the retiree elects dependent coverage with respect to health insurance, each retiree is required to pay entirely for such dependent coverage in the amount of \$135.98 per month.

Pursuant to the trust agreement, the Fund is administered by five trustees (Art. III, Sec. 3.1). Four of the five trustees are elected by members of Local 587 and serve 2-year terms. The fifth trustee is selected by the other four trustees to serve a 1-year term and must be a retired employee of the Miami Fire Department and a member in good standing in Local 587 at the time of his or her retirement. However, until such trustees are elected or appointed, the trust agreement specifies three specific individuals to serve as the board of trustees, beginning with the date of the execution of the trust agreement (Art. III, Sec. 3.1). 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 (Art. 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 is established, the City's involvement with the Fund is limited to making contributions in accordance with the terms of the collective bargaining agreement; the right to select an expert (a right also accorded to Local 587) to resolve whether an increase in contributions is needed by the Fund to adequately provide for the appropriate level of plan benefits) and the right to review, upon request, any records related to the Fund, to the extent permitted by law (collective bargaining agreement Art. 17).

We note that the trust agreement contains provisions which would permit entities other than the City of Miami and Local 587 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 Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Trustees shall determine ..." and Article IX, Section 9.5 of the trust agreement permits the board of trustees to merge the Fund "with any other fund established for similar purposes as this Trust Fund...." Article I, Section 1.3 of the trust agreement defines "employee" for the purpose of receiving benefits through the Fund, to include: (1) any member of Local 587 working for an employer as defined in the trust agreement; (2) elected or appointed officers or employees of the Trust, Local 587, or the Local's state affiliate or International parent body; (3) retired employees of Miami's Fire Department who were members in good standing of Local 587 at the time of their retirement; and (4) other

employees of the City of Miami other than the fire fighters of Miami for whom the trustees agree to accept contributions. The term "employer" is defined in Article I, Section 1.1 of the trust agreement to include: (1) the City of Miami; (2) Local 587, in relation to its employees; (3) any employer required to make contributions on behalf of its employees even though such an employer may not recognize Local 587 as the bargaining representative of its employees; and (4) the Fund, in relation to trust fund employees.

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 employees of the Miami Fire Department who are also members of Local 587, and retirees of the Fire Department who were members in good standing of Local 587 at the time of their retirement. While officers of Local 587 and members of the board of trustees are covered by the trust agreement, you represent that, with exception of the one trustee who is a retired employee of the Miami Fire Department, all are active bargaining unit employees of the Miami Fire Department and contributions are made for them on the same basis as for other members of the bargaining unit. You indicate that there are no employees of Local 587, or employees or officers of the Fund other than the trustees, discussed above, covered for benefits under the Fund.

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 employees 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 Miami, 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 Miami 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