

U.S. Department of Labor

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



DEC 5 1988

88-15A
Sec. 3(32), 4(b)(1)

Mr. Timothy A. Bush
Sirote, Permutt, McDermott, Slepian,
Friend, Friedman, Held & Apolinsky, P.C.
2222 Arlington Avenue South
Post Office Box 55727
Birmingham, Alabama 35255

Dear Mr. Bush:

This is in reply to your request on behalf of the Shelby County Hospital Board (the Hospital) d/b/a Shelby Medical Center, concerning the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Shelby County Hospital Board Defined Benefit Pension Plan (the Plan). Specifically, you request an advisory opinion concerning whether the Plan is a governmental plan within the meaning of section 3(32) of title I of ERISA and thus exempted from ERISA title I requirements pursuant to section 4(b)(1) of ERISA.

Your correspondence contains the following facts and representations. The Hospital was incorporated in Shelby County, Alabama, pursuant to Act No. 46 of the 1949 Regular Session of the Legislature of Alabama (the Alabama Act), which permits organization of a public corporation for the purpose of operating hospitals and other public health facilities. In accordance with the Alabama Act, the Hospital operates under the auspices of the Shelby County Commission, the governing body of the county, which has the authority to appoint individuals to serve as Hospital directors, amend the Hospital's certificate of incorporation, and control the number of directors on the Hospital Board. The Hospital is the only hospital in Shelby County. The Hospital receives partial funding from the county through special tax revenues authorized by Amendment No. 72 of Act No. 357 of the 1947 Regular Session of the Alabama Legislature.

You further represent that the Hospital makes Social Security contributions on behalf of its employees directly to the State of Alabama, rather than to the United States Treasury, pursuant to a payment arrangement available only to state and local governments. You also note that the vehicles owned and operated by the Hospital are licensed in the same manner as those of other state and local entities in Alabama.

According to the Plan Document (as amended April 23, 1985, August 27, 1985, and August 26, 1986) which accompanied your request, the Plan is maintained by the Hospital for the exclusive

benefit of its employees. The Plan is administered by an Administrative Committee, the members of which are appointed by the Hospital Board (§4.01 of the Plan Document). In addition, the Plan is funded solely by contributions made by the Hospital (§§6.01, 6.04 of the Plan Document).

Additionally, you forwarded a determination issued September 8, 1987 by the Pension Benefit Guaranty Corporation stating that the Plan is a "governmental plan" excluded from coverage under title IV of ERISA by section 4021(b)(2).

ERISA section 4(b)(1) excludes from ERISA title I coverage a plan which constitutes a "governmental plan", as defined in ERISA section 3(32). ERISA section 3(32) defines the term "governmental plan" to include "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."

Based on the facts and representations provided, as well as the documents accompanying your request, it is the view of the Department that the Hospital is a governmental agency or instrumentality within the meaning of ERISA section 3(32).

It is also the view of the Department that, on the basis of the provided facts, representations, and documents, the Plan maintained by the Hospital, as a government agency or instrumentality, is a "governmental plan" within the meaning of section 3(32) and thus excepted from the provisions of title I of ERISA pursuant to section 4(b)(1).

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

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations