

U.S. Department of Labor

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



AUG 4 1989

89-16A
Sec. 3(32), 4(b)(1)

Ms. Ann Crawford
Butler & Binion
1600 First Interstate Bank Plaza
1000 Louisiana
Houston, Texas 77002-5008

Dear Ms. Crawford:

This is in reply to your correspondence on behalf of the Galveston Municipal Police Association (GMPA) requesting an advisory opinion concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the City of Galveston Retirement Plan for Police (the Police Plan). Specifically, you request an advisory opinion that the Police Plan is a governmental plan within the meaning of section 3(32) of title I of ERISA and, thus, is excluded from the requirements of title I of ERISA. It appears that you also are concerned with applicable requirements of the Internal Revenue Code (the Code) and, specifically, with section 414(d) of the Code. This opinion does not purport to interpret section 414(d) of the Code. For an interpretation of that section, you should get in touch with the Internal Revenue Service.

Regarding applicability of the provisions of title I of ERISA, your correspondence contains the following facts and representations. The Police Plan is a defined benefit plan established December 1, 1980 by adoption of City Ordinance No. 81-5 adding new Article VIII, Chapter 16, to the Code of the City of Galveston. City Ordinances 84-10, 84-58, 85-68, and 88-61 have since amended the Police Plan. The City of Galveston originally contributed to the City of Galveston Employees' Retirement Plan Trust Fund (the Galveston Trust) to provide benefits for participants in the Police Plan. In accordance with a letter of intent dated December 20, 1984, between the City of Galveston and GMPA, benefits accrued by participants in the Police Plan were transferred on June 9, 1988, from the Galveston Trust to the City of Galveston Employees' Retirement Trust for Police (the Police Trust). The City of Galveston continues to contribute budgeted funds to the Police Trust to provide benefits for participants in the Police Plan. Plan participants also currently contribute 7 percent of earnings.

The Board of Trustees for the Police Trust consists of the president of GMPA, three trustees elected by secret ballot by members of the Galveston Police Department, a representative of the City of Galveston financial staff appointed by the City Manager, an appointee of the Mayor of Galveston, and an appointee of the Galveston City Council. GMPA is the official bargaining agent of police officers of the City of

Galveston and all members of GMPA are police officers employed by the City of Galveston; however, a police officer need not belong to GMPA to be a member of the Police Plan.

All 150 active participants in the Police Plan are police officers employed by the City of Galveston. All 19 current recipients of benefits under the Police Plan are retired police officers of the City of Galveston or the survivors of retired police officers of the City of Galveston.

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 entities. In this regard, the Department has previously 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 a governmental entity, cover employees of the governmental entity, and the governmental entity is involved in the management or control of the plan.

On the basis of facts and representations contained in your correspondence and related documents, it is the view of the Department that, insofar as the Police Plan appears to cover only police officers employed by the City of Galveston, is administered jointly by appointees of the City of Galveston and employee representatives of plan participants, and is funded by the City of Galveston and contributions from its employees covered by the Police Plan, the Police Plan is established and maintained by the City of Galveston, a political subdivision of state and/or local government, for its employees within the meaning of section 3(32) of title I of ERISA. Accordingly, the Police Plan 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 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,

Robert J. Doyle
Director of Regulations and Interpretations