

U.S. Department of Labor

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



OCT 25 1989

ERISA OPINION 89-23A
Sec. 3(32), 4(b)(1)

Ms. Ellen M. Davis
Wise Carter Child & Caraway
600 Heritage Building
Post Office Box 651
Jackson, Mississippi 39205

Dear Ms. Davis:

This is in response to your request for an advisory opinion concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to welfare benefit plans for employees of Hinds County General Hospital (the Hospital) in Jackson, Mississippi. Specifically, you request an advisory opinion stating the Hospital's welfare benefit plans for employees are governmental plans within the meaning of section 3(32) of title I of ERISA.

Your correspondence and the materials forwarded to the Department of Labor (the Department) contain the following facts and representations. Hinds County, Mississippi, has an elected Board of Supervisors which organized the Hospital in 1964. Mississippi statutes concerning community hospitals govern its operation. The County Board of Supervisors appoints all seven members of the Hospital's Board of Trustees. The Board of Trustees oversees Hospital operations. The Board of Supervisors also authorized an initial issuance of general obligation bonds of Hinds County for purchase of real property on which the Hospital is located and for Hospital construction and equipment as well as additional general obligation bonds and revenue bonds to finance expansion and improvement of the Hospital. Hinds County owns the real property on which the Hospital is located.

The Attorney General of Mississippi, by letter dated October 12, 1976, characterized the Hospital as a "political arm of the county in the same manner as the county is a political subdivision of the State." Mississippi statutes and purchasing regulations of the Mississippi Office of General Services govern purchases made by the Hospital. No sales tax is paid on purchases made by the Hospital. Further, with regard to liability for acts of negligence, you describe the Hospital as held to the same standard as political subdivisions of Mississippi, including Hinds County. You also state that the Hospital is treated under Mississippi Workers' Compensation Law as an employer which is a political subdivision.

Welfare benefit plans of the Hospital for its employees include a health and dental plan, a program of group insurance providing life insurance and accidental death and dismemberment benefits, and a long term disability income plan. The Hospital's retirement plan for its employees was not made the subject of your opinion request; however, you submitted a letter dated May 3, 1984, from the Pension Benefit Guaranty Corporation stating the Hospital's retirement plan is a governmental plan within the meaning of section 4021(b)(2) of title IV of ERISA.

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, instrumentality, or political subdivision 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 welfare plans maintained for its employees by the Hospital, as a government agency, instrumentality, or political subdivision, are "governmental plans" 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.

You may wish to note that the Public Health Service Act has been amended to include many state and local government health plans among those which must provide continuing health care coverage for participants. For further information regarding relevant provisions of the Public Health Service Act you may wish to get in touch with the Health Care Financing Administration, U.S. Department of Health and Human Services.

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations