

**U.S. Department of Labor**

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



August 23, 1995

95-20A  
ERISA SECTION 3(32)

Mr. David Needham  
Assistant General Manager  
Grand Rapids Area Transit Authority  
333 Wealthy Street, S.W.  
Grand Rapids, Michigan 49503

Dear Mr. Needham:

This is in response to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Grand Rapids City Coach Lines, Inc. and Amalgamated Transit Union Pension Plan (the Pension Plan) is a governmental plan within the meaning of section 3(32) of Title I of ERISA and, therefore, excluded from coverage under that title.

Section 4(a) of Title I of ERISA provides that any employee welfare benefit plan or any employee pension benefit plan established by an employer, an employee organization, or both will be covered by that title unless excepted under section 4(b). Section 4(b)(1) provides that any governmental plan described in section 3(32) is excluded from coverage under the title. Section 3(32) generally defines the term "governmental plan" to include, among others, any plan established or maintained by the United States, any state or subdivision of a state, or any agency or instrumentality of any the foregoing.

You advise that the Pension Plan was created originally under an agreement effective June 7, 1946, which was last amended and restated effective July 1, 1983. The parties to the 1983 trust agreement were Local Union 836, Amalgamated Transit Union, AFL-CIO (the Union); Grand Rapids City Coach Lines, Inc. (the Coach Lines); and the trustee.

Under an operations agreement effective during this period, the Coach Lines operated a "public passenger transportation system" for the Grand Rapids Area Transit Authority Board (GRATA). Employees of the system were the employees of the Coach Lines, not GRATA.

As of September 30, 1992, GRATA elected to terminate the operations agreement with the Coach Lines, and the employees of the Coach Lines were transferred to GRATA. GRATA assumed all the responsibilities of the Coach Lines as a successor employer/ sponsor of the Pension Plan under an agreement effective on that date between Coach Lines, GRATA, and the Union.

GRATA was originally established pursuant to an Interlocal Agreement dated July 1, 1977 (the Interlocal Agreement), between the Cities of East Grand Rapids, Grand Rapids, Grandville, Kentwood, Walker, and Wyoming and the County of Kent pursuant to the State of Michigan's Urban Cooperation Act of 1967 (Mich. Comp. Laws Ann. §§ 124.501 et seq. (West 1991)). GRATA is governed by a Board of Directors. Under Article VIII, Section 2 of the Interlocal Agreement, each of the parties to the Interlocal Agreement appoints a number of the members of the Board of Directors based on the ratio of its population to the total population of all the parties, but in no event less than one member. Members of the Board of Directors serve staggered three year terms. Article XI of the Interlocal Agreement provides that each of the parties "shall accept a share of the financial responsibility for the continuing operation and support of the public transportation system" based on a formula set forth therein. This formula is

applied to apportion the responsibility for the total financial support required by GRATA. Article IX, Section 1 of the Interlocal Agreement provides:

Section 1. Privileges and Immunities from Liability. All of the privileges and immunities from liability, and exemptions from laws, ordinances and rules, and all pensions, relief, disability, workmen's compensation and other benefits which apply to the activity of officers, agency, or employees of any public agents or employees of any participating public agency shall apply to the same degree and extent to the performance of such functions and duties of such agents and employees of [GRATA] under the Agreement.

Based on the information presented, it is the position of the Department of Labor (the Department) that GRATA is an agency or instrumentality described in section 3(32). GRATA was organized under state law by a group of political subdivisions of the State of Michigan and is under the control of those subdivisions. Accordingly, it is the position of the Department that the Pension Plan, which provides pension benefits only to employees of GRATA and is currently maintained by GRATA, is a governmental plan within the meaning of section 3(32) of Title I of ERISA and is excluded under section 4(b)(1) from coverage under that title

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