

U.S. Department of Labor

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



September 8, 1997

97-20A
ERISA SEC. 3(32)

Ms. Kathleen M. Phillips
Phillips Levy & Rind, P.A.
3001 Ponce De Leon Blvd.
Coral Gables, Florida 33134

Dear Ms. Phillips:

This responds to your request for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Miami Beach Fraternal Order of Police (FOP) Insurance Trust Fund (hereinafter, the Fund). You describe the Fund as a health and life insurance arrangement providing benefits only to individuals who are either actively employed as police officers by the City of Miami Beach, Florida (hereinafter, the City) or are retired from such employment with the City.¹ Further, you state that, pursuant to a collective bargaining agreement between the City and FOP (William Nichols) Lodge No. 8 (hereinafter, the Local Union), the City contributes to the Fund on behalf of its police officers who choose to receive benefits from the Fund, rather than from the City's health benefit arrangement for its employees.² Based on these and other representations and on documents that you submitted, you request an opinion concluding that the Fund is a "governmental plan," as defined in ERISA § 3(32) and, thus, that it is excluded from ERISA Title I coverage by § 4(b)(1).

You advise that the Local Union is an association of police officers, all of whom are employed by the City, and that the Local Union operates pursuant to a constitution under which it engages in collective bargaining with the City on behalf of its members.³

Documents in your submission indicate that the Fund provides health benefits that it primarily self-insures but that are also backed by stop-loss insurance coverage. Death benefits are provided by the Fund through purchase of

¹ Your submission specifies that no employees of FOP (William Nichols) Lodge No. 8, no employees of the Fund, and no employees who are "non-governmental" participate in the Fund. Further, you indicate that the Fund employs only one individual, but that employee participates as the dependent of a covered police officer.

² The Local Union's constitution refers to the Fund as the City of Miami Beach F.O.P. Health Trust.

³ The Local Union's constitution provides that active membership may include any regularly appointed or elected full-time, retired, and former "law enforcement officers," but that only active members who are "bargaining unit members" may vote on collectively bargained matters or hold office in the Local Union. Art. 5, § 3A. Further, as provided in that constitution, the Local Union engages in collective bargaining only on behalf of its "bargaining unit members" (i.e., members employed by the City Police Department). Art. 2, § I; Art. 4, § 7. Other membership categories enumerated in the Local Union's constitution include retired, honorary, and associate memberships. Art. 5, § 3B & C; Art. 17. However, your representations indicate that the only retired individuals who participate in the Fund are police officers who retired from employment with the City, and that no honorary or associate members of the Local Union participate.

insurance from Lamar Life Insurance Company.⁴ According to the collective bargaining agreement currently in effect between the Local Union and the City (hereinafter, the Agreement),⁵ any eligible employee of the City may choose to participate in the Fund's health and life insurance benefit programs.⁶ Agreement, Art. IX, § 2(a). For each such participant, the City contributes to the Fund 90 percent of what it would have paid (per employee or family) to provide that individual's health benefits through the City's own plan; the City also contributes the total amount it would have expended for life insurance coverage outside the Fund.⁷ Agreement, Art. IX, § 1.

You state that the Fund is operated by a board of trustees (hereinafter, the Fund Board). The Fund Board consists of seven trustees: the president of the Local Union (sitting ex officio) and six others selected by the Local Union president from among Local Union members who are City police officers. An Agreement and Declaration of Trust (hereinafter, the Trust Document) specifies how the Fund Board is to operate the Fund. The Agreement also requires the City or the City's manager to be provided, presumably by the Fund Board, with certain documents, including a copy of the "F.O.P. Health Trust Plan booklet," the Trust Document, a "copy of the Trust's annual C.P.A. audit report," and notice of any changes in the Trust Document or in benefits provided by the Fund. Agreement, Art. IX, § 5. Any reasonable inquiries by the City concerning "finances of the Trust" must be appropriately answered, again presumably by the Fund Board, within a reasonable time. Agreement, Art. IX, § 5.

The Trust Document, at § 9.3, specifies that, subject to the Local Union's approval, the Fund Board may extend participation to other "parties,"⁸ provided that those parties make contributions to the Fund equal to the rate of the City's contributions to the Fund, and that they do not participate in the appointment or replacement of trustees on the Fund Board.

Section 3(32) of ERISA defines a "government plan" as "a plan established and 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." Therefore, if a political subdivision of state government, such as the

⁴ The Fund apparently also offers vision benefits through Vision Service Plan. However, because it is not clear that the City makes any contribution for such vision benefits, this opinion does not address the Vision Service Plan. The Department has previously opined that a benefit program provided by an organization composed exclusively of government employees and funded entirely at the expense of the organization's membership does not constitute a "governmental plan."

⁵ The current bargaining agreement between the City and the Local Union covers October 1, 1994, through September 30, 1997. Article IX of the agreement pertains to the Fund.

⁶ It appears that the Fund is open to "bargaining unit members" of the Local Union as well as any other City police officer subject to the Agreement, any of whom may choose the Fund, rather than participate in the City's own health benefit arrangement for its employees. The agreement also specifies, in Article IX, § 3, that employees selecting the Fund for their health and life insurance benefits may continue to participate in the dental plan maintained for them by the City.

⁷ The City's current contribution rate for single employees is \$103.05 per month and for families is \$253.03 per month. You also specify that biweekly employee contributions are \$56.04 for single employee coverage and \$137.57 for family coverage.

⁸ The Trust Document does not specify whether any "parties" it may cover may be individuals, employees, employers, or employee organizations.

City, unilaterally establishes and maintains a benefit arrangement that it administers solely for its own police officers, that benefit arrangement would be a "governmental plan."

In addition, the term "governmental plan" may also include a plan that is established and maintained exclusively for the benefit of employees of a government, although the plan is administered by an "employee organization" (within the meaning of ERISA § 3(4)) whose only members are that government's own employees, provided that the plan is funded exclusively by the government, or by the government and by that government's employees who make up the membership of the sponsoring employee organization.

Your representations indicate that, as the Fund currently operates, participation is de facto limited to police officers who are current or former employees of the City; the Fund is administered by the Local Union solely for the benefit of participants who are current or former police officers of the City; the Local Union's membership is itself limited to current and former police officers employed by the City; and the Local Union meets the definition of an "employee organization" in ERISA § 3(4). You further represent that the sole sources of contributions to the Fund are the City itself, which contributes pursuant to the Agreement (as described above), and the City's active and former employees. Based on these representations, it is the Department's view that the Fund, as you represent its current operations, is a "governmental plan" within the meaning of ERISA § 3(32) and, by virtue of ERISA § 4(b)(1), is excluded from ERISA Title I coverage.⁹

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,

John J. Canary
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations

⁹ Nothing in this opinion is to be taken as expressing any views concerning the effect of any extension of the Fund's coverage beyond its current scope, as is apparently permitted by the Fund's Trust Document, on the Fund's status as to ERISA Title I.