

May 21, 1975

Dear :

This is in response to your inquiry of January 17, 1975, regarding bonding of fiduciaries under section 412 of the Employee Retirement Income Security Act of 1974 (ERISA).

Your question involves the necessity of bonding an Impartial Chairman because of a typical provision in collectively bargained welfare and pension plans of the transit industry in . The provision is as follows:

In the event the Trustee cannot interpret or construe this instrument or decide any matter, or resolve any dispute within their jurisdiction because of a tie vote, then, on the written request of any two (2) Trustees, the matter or dispute shall be submitted for decision to a special meeting of the Trustees to be held at a time and place fixed, upon five days' notice, by the Impartial Chairman of the Local Transit Industry in . Such Impartial Chairman shall preside at such special meeting and shall, for the purpose of deciding the matter or dispute, be vested with the full voting powers of a Trustee.

A temporary bonding regulation was published in the Federal Register of January 10, 1975, which incorporated by reference most of the bonding regulations issued under the Welfare and Pension Plans Disclosure Act and makes them applicable to plan officials under the ERISA. The effect of this temporary regulation is to allow for the continuation of existing bonding practices, while permanent bonding regulations are being considered. For the purpose of the temporary bonding regulations only those fiduciaries who handle funds or other property of a plan must be bonded.

While we do not have the terms of a particular trust to cite, it is reasonable to assume that the trustees are "handling" funds or other property of a plan in the performance of their duties as trustees. Based on this assumption, an Impartial Chairman being vested with the full voting powers of a trustee, would likewise be "handling" funds or other property of a plan when acting as Impartial Chairman and is required to be bonded to the same extent as the regular trustees.

P/OPINION 75-119

It is noted that you state some of the employers are Public Authorities. You may want to consider the applicability of section 4(b)(1) of the ERISA which is as follows:

The provisions of this title shall not apply to any employee benefit plan if such plan is a governmental plan (as defined in section 3(32)).

Sincerely,