

September 21, 1976

Dear :

Thank you for your letters dated March 26 and April 14, 1976, and the additional material you enclosed with your letter dated June 4, 1976. I am sorry that we could not reply sooner. You would like to know if the (named) Hospital Pension Plan is a governmental plan within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) and, therefore, exempt from coverage under Title I, pursuant to section 4(b)(1).

According to the documents you submitted and the information in your letters, the Hospital, an instrumentality of (County, State), is owned by (County) under an Act of the General Assembly of (State) dated May 30, 1968, whereby the County was authorized to accept ownership of the Hospital as a charitable gift from the Trustees. The Hospital has agreed to continue the pension plan for its qualified employees. The Plan is funded entirely by the Hospital (no contributions are required from the employees) and is administered by the Pension Committee, appointed by the (County) Hospital Board.

Section 4(b)(1) exempts governmental plans from coverage under Title I of the ERISA. Section 3(32) defines the term "governmental plan", in part, to mean 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 foregoing, it is concluded that the pension plan of the Hospital is established and maintained by the Hospital, a wholly owned instrumentality of the (County, State). According, it is a "governmental plan" as defined in section 3(32) of the ERISA and is exempt from coverage under Title 1 pursuant to the provisions of section 4(b)(1).

However, even though a governmental plan is exempt from coverage under Title I, many of the tax provisions of Title II (which are administered by the Internal Revenue Service) may apply. For example, governmental plans may qualify under section 401(a) of the Internal Revenue Code in order to attain special tax treatment for employees who participate under such types of plans. Although a governmental plan does not have to meet the alternative minimum participation, vesting, and funding requirements added to the Code by Title II, in order to attain qualified status, it must satisfy the coverage requirements of section 401(a)(3) of the Code, the nondiscrimination rule of section 401(a)(4), and the vesting provisions of section 401(a)(7), as in effect prior to the enactment of the ERISA. In addition, qualified governmental plans must satisfy the requirements of section 415 of the Code relating to contributions or benefits.

Sincerely,