

September 27, 1976

Dear :

Thank you for your letters requesting a determination under the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

According to the letters and documents submitted, the (named) Medical Care Facility (Facility) was established by the counties of (named) under the authority of (State) Statutes. The Facility is administered by a Board of Trustees, an instrumentality of the three counties. The Facility has established and is the sole contributor toward a life insurance program and a pension plan for employees. In addition, employees may make voluntary contributions and, thus, be entitled to receive an employee supplemental retirement benefit. You request that we issue a determination that the employee benefit programs are exempt from coverage under the ERISA.

Section 4(b) of Title I of the ERISA exempts governmental plans from coverage thereunder. 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.

It is concluded that the plans are established and maintained for its employees by the Facility, an instrumentality of the counties of (named), political subdivisions of (State). Accordingly, they are "governmental plans" as defined in section 3(32) of the ERISA, and are exempt from coverage under Title I pursuant to the provisions of section 4(b)(1).

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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 ERISA. In addition, qualified governmental plans must satisfy the requirements of section 415 of the Code relating to contributions or benefits.

Sincerely,