

September 27, 1976

Dear :

Thank you for your letter of March 18, 1976, and the additional information in your letter of April 19, 1976, requesting a determination whether the pension plan of the (named) County Sanitary Authority (Authority) is a governmental plan and, therefore, exempt from coverage under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

The Authority was formed by action of the City Council of (City) and the Board of Commissioners of (named) County and by joinder of (City). It was chartered as an Authority by (State). Its Board of Directors is appointed both by (City) and (County). The pension plan is funded by employer and employee contributions and is administered by the Pension Committee. Although your letter states that the Pension Committee is comprised of members appointed by the employees and employer, the photocopy of Article VI submitted with your letter of April 19, 1976 states that the members of the Pension Committee are to be appointed by the board. Also, the Board may remove members of the Committee, with or without cause, appoint new members, and increase or decrease the number of members. The Committee's decisions or actions are subject to reversal or modification by the Board (Article X).

Section 4(b)(1) 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 any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

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Based on the above, it is concluded that the pension plan of the Authority is established and maintained by the Authority, a political subdivision of the government of (State). Therefore, the plan is a governmental plan as defined in section 3(32) of the ERISA and is exempt from coverage under Title I 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,