

October 30, 1976

Dear :

Thank you for your letter of May 24, 1976, requesting a determination under the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

According to your letter and your conversation with a member of my staff, all employees of the Town of (named) are covered under a pension plan which is entirely funded by the Town. The City Council determines the benefits to be provided and to whom the contract is to be awarded.

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 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 plan is established and maintained for its employees by (Town), a political subdivision of (State). Accordingly, it 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).

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

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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 rules 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,