

December 10, 1976

Dear :

Thank you for your letter dated March 15, 1976, requesting a determination whether an employee pension plan administered by the City of (named) is exempt from title I of the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

Section 4(b)(1) of the ERISA provides that title I shall not apply to any employee benefit plan if such plan is a governmental plan as defined in section 3(32). This section, in part, defines a governmental plan as 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.

Since the pension plan is administered by (City), a political subdivision of a State, it is concluded that 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,

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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,