

December 10, 1976

Dear :

Thank you for your letter dated May 11, 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, education in (State) is a State function and the (named) high School District (District) is a subsidiary of the State. The District and its employees contribute to two State retirement plans - the State Retirement System for Classified Employees and the State Teachers Retirement System for Certified Employees. You seek confirmation that the District is exempted from filing Form EBS-1.

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 above, it is concluded that the plans are established and maintained for its employees by the District, an agency or instrumentality 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). The plans need not file Form EBS-1.

However, even though a governmental plan is exempt from coverage under title I, many of the tax provisions of

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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,