

December 20, 1976

Dear :

Thank you for your letter dated August 29, 1975, requesting a determination that the (named) Board of Education is not required to complete the Employee Welfare and Pension Benefit Plan Annual Report Form D-2 or the Plan Description Form EBS-1. I am sorry we could not reply sooner. You request this on the basis that any plan of the (named) Schools is a government plan.

According to your letter and your conversation with a member of my staff, the (named) schools are agencies of (State). The Schools and their employees contribute to the State Retirement System, which is administered by a Board of Trustees under the complete control of the Legislature.

Section 4(b)(1) of the Welfare and Pension Plans Disclosure Act (WPPDA) excludes from coverage under that Act any plan administered by the government of a State or by an Agency or instrumentality of a State. Section 4(b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) excludes governmental plans from coverage under title I of the ERISA. Section 3(32) of the ERISA 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, maintained and administered for its employees by agencies or instrumentalities of (State). Accordingly, it is concluded that the plan is a governmental plan and

P/OPINION 76-131

exempt from coverage under the WPPDA and title I of the ERISA pursuant to the provisions of section 4(b)(1) of each Act. Neither the D-2 nor the EBS-1 need be filed with the Department of Labor.

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 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,