

3(32) ✓
4(b)(1)

March 10, 1976

Dear _____ :

This is in response to your letter, dated December 2, 1975, requesting a determination as to whether the above-described plan is covered under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). We regret the delay in answering; however, the demands on staff time because of the large volume of inquiries generated by the ERISA and the development and issuance of necessary regulations and interpretive bulletins have precluded an earlier response.

According to the information furnished by you in your letter as well as during a telephone conversation on January 7, 1976, with _____ of my staff, the subject plans were established by the _____ County Public Schools. Benefits are provided under insurance contracts, and both the employer and the participants contribute to the cost of benefits. Both plans are administered by the school system.

Section 4(b) of Title I 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.

It is concluded that the plans are established and maintained for its employees by the _____ County Public Schools, an agency or instrumentality of a political subdivision of the State of _____. Accordingly, they are "governmental plans" as defined in section 3(32) of the ERISA, and they are 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 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 ERISA. In addition, qualified governmental plans must satisfy the requirements of section 415 of the Code relating to contributions or benefits.

Sincerely,