P/OPINION 77-14

3(32)

January 11, 1977

Dear :

Thank you for your letter dated May 6, 1976, requesting a determination of the status of the City of (named) Employees Pension Plan and Trust under the Employee Retirement Income Security Act of 1974 (ERISA). (City), a political subdivision of (State), is the sole contributor to the Plan, which is managed by a Board of Trustees appointed by the City Council. We regret the delay in responding to your inquiry.

Section 4(b)(1) exempts governmental plans from coverage under title I of the ERISA. Section 3(32) 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 City of (named) Employee Pension Plan was established and is maintained by (City), a political subdivision of (State), it is concluded that the plan is a governmental plan and is exempt from coverage under title I. The Plan is not subject to any of the requirements of title I, including the reporting and disclosure, participation, vesting, funding and fiduciary requirements.

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 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,