

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Administration of Pension and Welfare Benefit Programs
Washington, D.C. 20216



JUN 21 1979

Mr. Carl F. Freeman
Special Agent in Charge
Room 502
Federal Bureau of Investigation
Federal Building
600 Federal Place
Louisville, Kentucky

3 (1)
3 (4)
3 (32)
4 (b) (1)

Attention: Mr. Thomas Walsh

re: Louisville Police Officers' Sick
and Death Benefit Fund, Inc.

Gentlemen:

This is in response to your inquiry, which was addressed to Edward F. Daly, Assistant Administrator for Enforcement, whether the Louisville Police Officers' Sick and Death Benefit Fund, Inc. (the Corporation) is an employee benefit plan covered by Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The following analysis is based upon materials which you furnished to Mr. Daly.

The by-laws of the Corporation indicate that the Corporation is operated for the purpose of providing for the payment of hospitalization, health, sick benefits and death benefits to its members or their dependents (article I, section I). Eligibility for "membership" in the Corporation is limited to regular and retired police officers of the Division of Police, Department of Public Safety of the City of Louisville, on a voluntary basis (article III, sections I and II). The business and affairs of the Corporation are "managed" by its board of trustees (article VI, section I), who generally appear to be elected by the membership (see article VI, section I), and by a president, who supervises and controls "the business and affairs of the corporation" (article VII, section V). Article IV of the by-laws provides for payment of sickness and death benefits to members and Article V provides for payment by members of benefit premiums.

On the basis of these provisions of the by-laws, we have concluded that the program of benefits provided through the Corporation is an employee welfare benefit plan, within the meaning of section 3(1) of ERISA; that such plan does not appear to be a governmental plan within the meaning of section 3(32) of ERISA; and that such plan, therefore, appears to be within the coverage of Title I of ERISA as specified in section 4 of ERISA.

Section 3(1) defines the term "employee welfare benefit plan" or "welfare plan" to mean "any plan, fund or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries . . . medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident . . . [or] death" There appears to be no question that the Corporation maintains a program of benefits in the event of sickness and death. At issue, therefore, is whether that program was established or is maintained by an employer or by an employee organization, or by both. Since the Corporation is not itself an employer of the individuals who are covered by its benefit program, the program of benefits maintained by the Corporation would not be a welfare plan unless the Corporation is an employee organization within the meaning of section 3(4).

The term "employee organization" is defined in section 3(4) to include an employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan. The term "employees' beneficiary association" is not defined in ERISA. Substantially identical language, however, was used in the definition of the term "employee organization" in section 3(3) of the Welfare and Pension Plan Disclosure Act (WPPDA), Pub. L. No. 85-836, 85th Cong., 2d Sess., 1958 (the WPPDA was generally repealed by section 111(a)(1) of ERISA). In interpreting section 3(3) of the WPPDA, the Department developed certain criteria to be used in construing the term "employees' beneficiary association," for which the WPPDA, like ERISA, provided no definition. Those criteria, which are set forth in §315.100 of the WPPDA Interpretive Manual (1965), are:

(1) Membership in an employees' beneficiary association is conditioned on employment status -- for example, if membership is limited to employees of a certain employer;

(2) An employees' beneficiary association has a formal organization, with officers, by-laws or other indications of formality;

(3) An employees' beneficiary association generally does not deal with employers; 1/

(4) An employees' beneficiary association which is a "employee organization" within the meaning of the statute is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

The by-laws of the Corporation indicate that it meets these criteria: (1) membership in the corporation is limited to regular and retired police officers of the Division of Police, Department of Public Safety of the City of Louisville; (2) the Corporation has a formal organization, with a board of trustees, officers, and by-laws; (3) the Corporation does not

1/ This criterion distinguishes an employees' beneficiary association from an organization that represents employees in dealing with employers concerning an employee benefit plan. Such an organization is also an "employee organization" as defined in section 3(4). Thus, if this criterion is not satisfied by an association, the association, although not an employees' beneficiary association, may nevertheless be an employee organization within the meaning of section 3(4).

appear to deal with its members' employer and members' premium payments appear to represent the sole source of funding for the benefits provided by the Corporation; and (4) according to its by-laws, the Corporation is organized for the purpose of providing a program of welfare benefits. Accordingly, in our opinion the Corporation is an employees' beneficiary association and, therefore, an "employee organization" within the meaning of section 3(4) of ERISA, and the program of benefits that it maintains is an "employee welfare benefit plan," within the meaning of section 3(4) of ERISA.

Under section 4(a) of ERISA, Title I generally applies, except as provided in section 4(b), and with certain other exceptions not here relevant, to any employee benefit plan if it is established or maintained by, among other entities, any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce. In our opinion, the phrase "industry or activity affecting commerce" is broadly defined in section 3(12) of ERISA to include the activities of police officers such as those who are members of the Corporation. Of the exceptions from Title I coverage listed in section 4(b), only section 4(b)(1) appears to be of potential relevance in this matter. Section 4(b)(1) provides that Title I of ERISA does not apply to a plan which is a governmental plan, as defined in section 3(32). Thus, the program of benefits maintained by the Corporation, although an employee welfare benefit plan within the meaning of section 3(1), is covered under Title I of ERISA if, and only if, it is not a governmental plan, as defined in section 3(32) of ERISA.

Section 3(32) defines the term "governmental plan" 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. Although the Corporation is limited in membership to police officers and former police officers of the City of Louisville, the Corporation itself does not appear to be a governmental entity described in section 3(32). Accordingly, the program of benefits that it maintains, in our opinion, is not a governmental plan within the meaning of section 3(32). 2/

For the foregoing reasons, therefore, we have concluded that the program of benefits that the Corporation maintains is an employee welfare benefit plan that is subject to Title I of ERISA.

Sincerely,

Ian D. Lanoff
Administrator

2/ Important to our conclusion in this regard is the absence of any indication that the city of Louisville is involved in the administration or funding of the benefits provided by the corporation. If this assumption is not correct, the question whether the program of benefits provided by the Corporation is a governmental plan should be resubmitted.