

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:  
Pension and Welfare Benefit Programs

OPINION 80-19A  
3(32), 4(b)(1)

APR 14 1980

Mr. Boyd C. Campbell, Jr.  
Hartsell, Hartsell & Mills  
P.O. Box 368  
Concord, North Carolina 28025

Dear Mr. Campbell:

This is in reply to your letter requesting an advisory opinion concerning Cabarrus Memorial Hospital<sup>1</sup> (the Hospital). Specifically, your request concerns whether the sick pay plan; the hospital, surgical, and medical benefits plan; the annuity plan; and the pension plan established or maintained by the Hospital for its employees are “governmental plans” within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) and, thus, are excluded from ERISA title I coverage by ERISA section 4(b)(1). We regret the delay in responding to your inquiry due to the volume of correspondence concerning ERISA.

You represent that the Hospital was established pursuant to Chapter 307, 1935 Public-Local and Private Laws of the North Carolina General Assembly, a statute declaring the Hospital to be a body corporate and enabling the county to levy a special tax of 4¢ per \$100 of property tax valuation in Cabarrus County for construction, operation, and maintenance of the Hospital and to substantially control operations of the Hospital through a Board of Trustees appointed by the County Board of Commissioners. Your submissions also draw attention to the North Carolina General Assembly’s passage of bills relating to the Hospital, including Chapter 288, 1939 Public Laws of the General Assembly of North Carolina amending the Revenue Bond Act of 1938 to expand the definition of a “municipality” to include the Hospital.

In addition, the Supreme Court of North Carolina recognized, in Sides v. Cabarrus Memorial Hospital, Inc., 287 N.C. 14 (1975), that the Hospital is an agency of Cabarrus County.

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<sup>1</sup> Cabarrus County Hospital became Cabarrus Memorial Hospital through an act of the North Carolina General Assembly in 1951. In 1951 N.C. Sess. Laws, Ch. 45.

You have submitted the following documentation in support of your contention that the Hospital's employee benefit plans are "governmental plans":

1. A copy of a letter dated November 23, 1964, from J.E. Wall, District Director, Internal Revenue Service, stating that the Hospital is an instrumentality of Cabarrus County and, therefore, not subject to Federal income tax.
2. A copy of a letter dated May 17, 1965, from Thomas Wade Bruton, former North Carolina Attorney General, stating that the Hospital is a "direct instrumentality of the County" and, therefore, need not advance court costs and process tax when commencing a lawsuit.
3. A copy of a letter dated March 31, 1966, also from T.W. Bruton, former North Carolina Attorney General, opining that the Hospital is a "county agency and, accordingly, would come within the terms of the provision 'other subdivision of the State' ...." with regard to state laws concerning public contracts.
4. A copy of a letter dated April 14, 1971, from I. L. Clayton, former Commissioner of Revenue for the State of North Carolina, in which it is stated that the Hospital is "an integral part of the county operation and body politic of the county," and is, therefore, entitled to a gasoline tax refund if its application for such refund is consolidated with the county's gasoline tax refund application.
5. A copy of a letter dated July 22, 1971, from former North Carolina Attorney General Robert Morgan, stating that the Hospital is "a wholly-owned instrumentality of the County and is a separate, independent, juristic, political subdivision of government with regard to ... retirement purposes, and the employees are eligible for social security coverage as employees of an independent governmental unit and are also eligible for participation in the Local Governmental Employees' Retirement System."

You have also submitted a letter dated December 20, 1971, from J.B. Harris, Chief Accountant of the Employment Security Commission of North Carolina, stating that the Hospital as "an instrumentality of a political subdivision" is exempt from the Employment Security Law of North Carolina, and an additional letter dated January 25, 1978, from D.R. Taylor, Chief Accountant of the Employment Security Commission of North Carolina, stating that the Hospital is a liable employer under the Employment Security Law of North Carolina. You state that the Hospital's exclusion from the North Carolina employment compensation system, when it was available to the Hospital, was based on its status as a governmental entity.

You also state that the Hospital acquires and uses permanent license plates on its vehicles in the same manner as other state and local governmental entities, that the Hospital's contributions to Social Security are paid directly to the State of North Carolina rather than to the United States Treasury (the latter being the method of payment used by private employers), and that the Hospital participates in the State of North Carolina combined hospital purchasing program.

ERISA section 4(b)(1) excludes governmental plans from ERISA title I coverage. ERISA section 3(32) provides that the term “governmental plan” means “... 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.”

Regulations further clarifying the definition of a governmental plan have not been issued by the Department of Labor.

Based on your representations with regard to the Hospital and the employee benefit programs described above, it is the opinion of the Department that the Hospital’s employee benefit programs are governmental plans within the meaning of section 3(32) of ERISA and are, therefore, excluded under section 4(b)(1) from ERISA title I coverage.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator of Pension and Welfare Benefit Programs