

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 80-35A
4(b)(1)
3(32)

JUN 9 1980

Mr. Gerald A. Sumida
General Counsel
Center for Cultural and Technical Interchange Between East and West, Inc.
P.O. Box 656
Honolulu, Hawaii 96809

Dear Mr. Sumida:

This is in response to your letters requesting an advisory opinion as to whether the pension and welfare plans of the Center for Cultural and Technical Interchange Between East and West, Inc. (Corporation) are covered under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). We regret the delay in answering but because of the large volume of inquiries generated by ERISA and the development and issuance of necessary regulations and interpretive bulletins, answers to correspondence have been delayed.

According to the information furnished by you in your letter, the predecessor of the Corporation was established pursuant to Chapter VII of the Mutual Security Act of 1960 (Public Law 86-472) to promote better relations and understanding between the United States and the nations of Asia and the Pacific through various exchange programs. Under that act, the Secretary of State was directed to establish and operate the predecessor, which was accomplished by a grant-in-aid agreement between the Secretary of State and the University of Hawaii. From 1960 until 1975, the Corporation's predecessor was almost completely funded by annual congressional appropriations, and by Federal agencies (e.g., the Departments of Commerce and Health, Education and Welfare), foreign governments and international organizations for specific programs.

In 1974, the Corporation was reorganized as a nonprofit public corporation. In 1975, the Hawaii State Legislature enacted Act 82 establishing the Corporation as an educational nonprofit public corporation. On July 1, 1975, the Corporation came into existence and assumed full responsibilities for the administration of the East-West Center. On that date, the Department of State terminated the previously existing grant-in-aid agreement with the University of Hawaii and entered into a new, similar grant-in-aid arrangement with the Corporation. The Corporation is headed by an 18 member board composed of the Governor of Hawaii, who appoints five members, the Assistant Secretary of State who also appoints five members, the President of the University of Hawaii (non-voting), and five members elected by the other members of the board.

Before the establishment of the Corporation, persons working at the East-West Center were employees either of the University of Hawaii, or the State of Hawaii civil service. After July 1, 1975, the employees were employed by the Corporation. The Corporation employees participate in one of two retirement plans: the State of Hawaii Employees Retirement System, or a retirement plan under which Corporation employees purchase individual annuities issued by Teachers Insurance and Annuity Association and/or College Retirement Equities Fund.

Section 4(b)(1) of ERISA excludes "governmental plans" from coverage under title I of ERISA. 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.

Although Act 82 provides that the Corporation “shall not be considered a department, agency, or public instrumentality of the State [of Hawaii], and shall not be subject to the laws of the State applying to departments, agencies and public instrumentalities of the State...”, it is nevertheless a public corporation created by the Hawaii State Legislature pursuant to an act of the U.S. Congress, funded principally by congressional appropriations, and directed by 18 members of a board of governors whose majority is appointed by, and serves at the pleasure of either the Governor of Hawaii or the Assistant Secretary of State for Educational and Cultural Affairs of the U.S. Department of State. For purposes of title I of ERISA, therefore, it is our opinion that the Corporation is an agency or instrumentality of the Government of the United States, or of the Government of the State of Hawaii, or of both. The two retirement plans in existence which benefit the Corporation’s employees, as well as the Corporation’s welfare plans, are, therefore, governmental plans which are exempt from coverage under title I of ERISA.

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