

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 80-36A  
4(b)(1)  
3(32)

JUN 18 1980

Mr. Gary P. Amaon  
Butler, Binion, Rice, Cook & Knapp  
Esperson Buildings  
Houston, Texas 77002

Dear Mr. Amaon:

This is in response to your letter of May 7, 1980, and enclosures, requesting an advisory opinion regarding coverage under the Employee Income Retirement Security Act of 1974 (ERISA). Specifically, your request concerns the applicability of ERISA to the Metropolitan Transit Authority Union Pension Plan Local 260, TWU, AFL-CIO (the Plan). You request an opinion that the Plan is a governmental plan within the meaning of ERISA section 3(32) and thus, is excluded from coverage of ERISA title I requirements by ERISA section 4(b)(1).

The following is a summary of representations made in materials submitted to the Department in this matter. Until 1974, transit services in Houston, Texas were provided by Rapid Transit Lines, Incorporated (Rapid Transit). In April 1974, the city of Houston purchased the assets of Rapid Transit and retained Rapid Transit to operate the transit system. The personnel of the transit system remained as employees of Rapid Transit. In 1977, Houston replaced Rapid Transit as the operator of the transit system with Houtran, Incorporated, (Houtran) which became the employer of the employees of Rapid Transit. After the creation of the Metropolitan Transit Authority of Harris County, Texas (Authority) in 1978, it acquired all the assets and liabilities and personnel comprising the transit system from the city of Houston and Houtran. On January 1, 1979, the Authority replaced Houtran as employer of the employees of Houtran. Houtran had maintained two pension plans for the employees of the transit system. Both plans were assumed by the Authority as the successor employer on January 1, 1979. Specifically you request an opinion with regard to the pension plan provided to Authority employees who are members of the Transit Workers Union of America, Local No. 260, AFL-CIO (the Union).

You represent that the Plan is maintained pursuant to a collective bargaining agreement between the Authority and Union. The Plan provides that all contributions to the Plan will be made by the Authority. Further, you indicate that Texas statute (Tex. Rev. Civ. Stat. Ann. Art. 1118x) provides that the Authority is a separate governmental body with the authority to levy and collect taxes for mass transit purposes, to issue certain regulatory pronouncements and to exercise the power of eminent domain.

The Plan is administered by four trustees, two of whom are appointed by the Union and two by the Authority. Article X of the Plan also provides that each trustee shall have one vote and that if the trustees cannot act because of a deadlock, the trustees may select an impartial arbitrator to decide the matter in dispute.

Section 4(b)(1) of ERISA states that the provisions of ERISA title I shall not apply to a governmental plan described in section 3(32) of ERISA. Section 3(32) of ERISA, in relevant part, defines the term "governmental plan" to mean "a plan established or maintained for its employees by ... the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." In ERISA Opinion 79-36, the Department concluded that certain plans maintained pursuant to collective

bargaining agreements between a union and employers which are political subdivisions of a state, or agencies or instrumentalities of such political subdivisions, funded exclusively by the employer, and jointly administered by an equal number of union and employer trustees, was a governmental plan within the meaning of ERISA section 3(32).

In our view, because it appears that the Authority is an agency or instrumentality of the government of the state of Texas and that the Authority established and maintains the Plan, the circumstances in your letter are not materially different from those at issue in ERISA Opinion 79-36.

Accordingly, it is the Department's position that the Plan is a governmental plan within the meaning of ERISA section 3(32) and, thus, is excluded from coverage by ERISA title I pursuant to ERISA section 4(b)(1).

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