



February 17, 1994

Mr. John R. Whitehurst II
Porter & Porter
2100 Central Trust Tower
Cincinnati, Ohio 45202

94-03A
ERISA SEC
3(32), 4(b)(1)

Dear Mr. Whitehurst:

This is in reply to your request for an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Addison Community Hospital (hereinafter, the Hospital) Employee Pension Plan (hereinafter, the Plan). Specifically, you request an advisory opinion concluding that the Plan is a governmental plan within the meaning of section 3(32) of Title I of ERISA and thus excluded by section 4(b)(1) from coverage by the requirements of Title I of ERISA.

Your correspondence and the materials you forwarded to the Department contain the following facts and representations. The Hospital is an acute care facility located in the Village of Addison, Michigan. To operate and maintain the Hospital, political subdivisions of state and local government in the vicinity of Addison, acting pursuant to state statute, jointly established a hospital authority, the Addison Community Hospital Authority (hereinafter, the Authority). The Authority has since filed a voluntary petition for bankruptcy in Federal court.

The Authority's organization was specified by state statute that also authorized its levy of a tax to fund Hospital operations and included provisions for a board of directors to govern the Authority. Certain members of the board of directors were selected by the legislative bodies of the political subdivisions participating in the Authority, were presented to the Authority for placement on the board, served at the pleasure of the appointing political subdivision which set their terms on the board, and remained subject to the legislative process of the selecting political subdivision. In addition, those board members selected, by majority vote, the remaining members of the board of directors, who are known as members-at-large. The terms of the members-at-large were governed by state statute.

The Authority's operation of the Hospital, prior to its initiation of bankruptcy proceedings, included providing Hospital employees with pension benefits. In establishing the Plan for Hospital employees, the Authority adopted a prototype defined benefit pension plan. The Plan is qualified under section 401 (a) of the Internal Revenue Code (the Code). The Internal Revenue Service determined the Plan to be a governmental plan within the meaning of section 414(d) of the Code pursuant to a letter to the Plan dated November 24, 1992.

As noted above, the Department of Labor (the Department) determines whether the Plan is a governmental plan by reference to sections 4(b)(1) and 3(32) of Title I of ERISA. While section 4(b)(1) excludes governmental plans from Title I of ERISA, section 3(32) defines the term "governmental plan," in pertinent part, as follows:

... 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.

For the Department to address whether the Plan is a governmental plan within the meaning of section 3(32) of Title I of ERISA, we must determine whether, based on your representations and the materials you forwarded, the Plan was established or maintained by a governmental entity described in ERISA section 3(32) for its employees. If those elements of the governmental plan definition are met, the Plan constitutes a governmental plan within the meaning of section 3(32) of Title I of ERISA.

Your representations include the Authority's creation and operation, according to state statute, as a political subdivision, agency, or instrumentality of state or local government; its authority to tax; and control of its everyday operations by participating subdivisions of state or local government. You also include representations that, although the Authority adopted the Plan, the Plan covers employees of an agency or instrumentality of government, the Hospital. Based on those representations, it is the Department's view that the Plan is established or maintained for Hospital employees by the Authority and/or the Hospital, which constitute one or more agencies, instrumentalities, or political subdivisions of government within the meaning of section 3(32) of Title I of ERISA. Consequently, the Plan is a governmental plan within the meaning of section 3(32) of Title I of ERISA. We note that this determination applies to benefit arrangements for Hospital employees only; it does not accord governmental plan status to benefit programs or activities of any prototype plan, consultant, service provider, or trade association through which the Hospital or Authority, as a subscriber, provides benefits under the Plan.

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.

This letter relates solely to application of the provisions of Title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Code.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations