

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington DC 20210



June 13, 1994

Mr. David R. Levin
Reish & Luftman
11 Dupont Circle, Suite 775
Washington, D.C. 20036-1207

94-19A
ERISA SECTION
3(32),4(b)(1)

Dear Mr. Levin:

This is in reply to your request for an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Appalachian Regional Commission Pension Plan (hereinafter, the Plan). Specifically, you request an advisory opinion concluding that the Plan is a governmental plan within the meaning of Title I of ERISA and thus is 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 of Labor (hereinafter, the Department) contain the following facts and representations. The Appalachian Regional Commission (hereinafter, the Commission) was established by Title I of the Appalachian Regional Development Act of 1965, 40 App. U.S.C. §1 through §405. The Commission is jointly sponsored by the Federal government and the following thirteen states: Alabama, Georgia, Kentucky, Maryland, Mississippi, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. The Commission assists only the participating states and their local governments. The Commission's purposes are to coordinate social and economic improvements by awarding grants, administering programs, conducting studies, and directing demonstration projects. It provides construction assistance for highways, sewer and water treatment plants, libraries, vocational education facilities, and higher education facilities; constructs and operates rural health facilities; and funds youth and education projects, adult literacy programs, and computer literacy programs.

The Commission's activities are funded primarily through direct Congressional appropriations. However, the United States Treasury also maintains a trust fund that receives equal contributions from the Federal government and from the participating states. The fund is used to pay the Commission's administrative expenses.

Two individuals co-chair the Commission: a representative of the governors of the participating states, who is elected annually by the governors from among themselves, and a Presidential appointee, who must be confirmed by the Senate.

Under the co-chairpersons' direction, the Commission's executive director oversees its day-to-day functions, including supervision of individuals performing services for the Commission.

You indicate that 54 individuals now perform services for the Commission. They include eight individuals currently employed by the Federal government, eight former Federal employees, and one former employee of Pennsylvania state government. The Federal retirement system accepts pension contributions from the Commission on behalf of current Federal employees and on behalf of former Federal employees who perform services for the Commission; and Pennsylvania accepts pension contributions from the Commission on behalf of its former state employee for services currently being performed for the Commission.

To provide retirement and disability benefits for the remaining individuals who perform services for the Commission, the Commission established the Plan, a defined benefit pension plan, on July 1, 1965. Approximately 37 individuals now actively employed at the Commission participate in the Plan. Thirty former employees of the Commission have vested Plan benefits, and two Plan participants are receiving disability benefits.

The Commission's executive director administers the Plan. Participants contribute to the Plan, and the Commission contributes on behalf of participants from its trust fund for administrative expenses.

Your request for an advisory opinion regarding "governmental plan" status involves application of sections 4(b)(1) and 3(32) of Title I of ERISA to the facts presented. Section 4(b)(1) of ERISA excludes from coverage under Title I of ERISA any plan that is a "governmental plan" as defined in section 3(32) of ERISA. The term "governmental plan" is defined in section 3(32) of ERISA, in pertinent part, as "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."

We conclude from your representations that the Commission is an "agency or instrumentality" of Federal and state government for purposes of Title I of ERISA. First, the Commission was established by Federal statute, and it is controlled exclusively by the Federal government and the thirteen participating state governments. Its functions concern matters traditionally reserved to Federal, state, and local governments. Further Federal employees work for the Commission without losing their right to participate in Federal government pensions. Moreover, the Commission derives its funding exclusively from appropriations by the Federal government or by participating state governments.

We further conclude that the employee pension benefit plan that the Commission has established and maintains for its employees is a "governmental plan" for the following reasons.

First, only employees of the Commission are eligible to participate in the Plan's retirement and disability benefits. Second, aside from participant contributions, the only sources of contributions to the Plan are appropriations for the Commission's administrative expenses by the Federal government or by participating state governments. Finally, the Commission controls administration of the Plan through its executive director.

For the above reasons, it is the view of the Department that the Plan is a "governmental plan" within the meaning of section 3(32) of Title I of ERISA. Because section 4(b)(1) of ERISA excludes "governmental plans" from the requirements of Title I of ERISA, the Plan is not required to comply with Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1 and, accordingly, it 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