

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



August 25, 1995

95-21A  
ERISA SECTION 3(32)

Mr. John D. Finn  
DeMars Pension Consulting Services, Inc.  
8700 Indian Creek Parkway  
Suite 185  
Overland Park, Kansas 66210

Dear Mr. Finn:

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 Ransom Memorial Hospital (the Hospital) health insurance, life insurance, disability insurance, section 125, profit-sharing retirement, and section 457 retirement plans (the Plans). Specifically, you request an advisory opinion concluding that the Plans are governmental plans within the meaning of section 3(32) of Title I of ERISA.

Your correspondence and the materials you forwarded to the Department contain the following facts and representations. The Hospital is located in the County of Franklin, Kansas (the County). The Hospital is a non-profit, county-owned, public hospital that provides routine and specialized medicine to the public, including services to low and moderate income persons. The Hospital provides needed health services to a four-county area. Over 80% of the hospital patients, however, are from Franklin County.

In 1929, A.L. and Sara H. Cook, by donation, set land and money aside for the purpose of creating a county hospital in Franklin County, provided that the County would match the funds and establish the county hospital as provided in Chapter 135 of the Laws of Kansas, 1923 (Chap. 135). The Franklin County Hospital Association (the Association) was created to raise the matching funds and oversee the construction of the Hospital.<sup>1</sup> In 1931, the Association donated the completed Hospital to the County. As part of the 1931 take over of the Hospital by the County, and pursuant to then section 19-1803 of the state statute governing county hospitals, the Commissioners of Franklin County<sup>2</sup> appointed a Board of Trustees (the Board) to manage the Hospital.

As provided in section 4 of Chap. 135, upon the Commissioners' acceptance of the donation of the Hospital and the appointment of trustees, the Hospital was "deemed established as a county hospital to the same extent and purpose as though the same had been established under the provisions of sections 19- 1801, 19-1802 and 19-1803, Revised Statutes of 1923, as now written or as hereafter modified." Chap. 135 and other provisions governing the establishment, operation and maintenance of county hospitals are now codified as Article 46 of Chap. 19 of the

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<sup>1</sup> You represent that a 1929 deed transferred ownership of the Hospital property directly to the Association. You further state that there are no records of the dealings of the Association and that it appears that the Association was set up to act as trustee for the land and the donated money.

<sup>2</sup> Franklin County is governed by officials who are publicly elected as commissioners to serve on the Board of Commissioners of Franklin County (the Commissioners). Each elected commissioner of a county in the state of Kansas represents a commissioner district within that county. See Kan. Stat. Ann., Art. 2, §§ 19-201 to -203 (1987); Kan. Stat. Ann., Constitution, Art. 4, § 2 (1987).

General Statutes of the State of Kansas, 1987. See Kan. Stat. Ann., Art. 46, §§ 19-4601 to -4625 (1987) (Article 46). The Hospital has continued to be owned and operated by the County pursuant to Article 46 and its predecessors.

Your submission contains the following additional facts and representations. As required by the July, 1992, revision of the Bylaws of Ransom Memorial Hospital (the Bylaws) and Article 46, each trustee on the Board is appointed by the Commissioners and serves a four-year term of office on the Board. The trustees of the Board select an administrator from among themselves to manage the Hospital subject to the policies and orders of the Board. See Bylaws, Art. II. Article 46 further provides that the Board "shall make and adopt such bylaws and rules and regulations for the management and control of the hospital as it deems necessary so long as the same are not inconsistent with [Article 46], the statutes of the state of Kansas, [and] the resolutions of the county . . . ." See Kan. Stat. Ann., Art. 46, § 19-4610 (1987). The further duties and responsibilities of the Board are as prescribed by the Bylaws and Article 46.

Although Article 46 provides in § 19-4613 for the Hospital's right to eminent domain, the title to any real or personal property held by the Hospital is vested in the County where the hospital is located. See *id.*, § 19-4624. Hospital monies are deemed public monies and are handled according to the laws of the State of Kansas. See *id.*, § 19-4608. The Commissioners have borrowing authority and may levy a tax or issue bonds for the benefit of the Hospital pursuant to Article 46. The interest on revenue bonds issued by the Commissioners under Article 46 is exempt from all state, county, and municipal taxation, except inheritance taxes, in the State of Kansas. The Hospital is a tax-exempt organization, not subject to federal, state, or city tax.

The Hospital is authorized by state statute to "establish and fund pension and deferred compensation plans and any other employee benefit plans for hospital employees . . . ." See *id.*, § 19-4610. You represent that all participants in the Plans are either Hospital employees or their dependents.

The Hospital established the Ransom Memorial Hospital Employee Health Care Fund (the Health Insurance Plan) effective January 1, 1994. The Hospital is the plan administrator, and the Hospital Director of Human Resources and the Hospital Administrator are the plan trustees. LaHood & Associates, Inc. is the plan claim supervisor, and Missouri Valley Life & Health Insurance Company (MVLH) provides a stop-loss insurance policy for individual claims over \$20,000 that are made under the self-funded Health Insurance Plan. The Hospital and the employees fund the plan through contributions.

The Hospital established a term life insurance and accidental death and dismemberment (AD&D) benefit plan (the Life Insurance Plan) on August 1, 1984. The Hospital pays the premium to the insurer, Lafayette Life Insurance Company, for a group insurance policy that provides a \$5000 life insurance benefit and a \$5000 AD&D benefit for all active, full time, Hospital employees with one year of service. The employees have the option to purchase an additional insurance benefit of \$5000 for \$1.65 per month.

The administrators for the Life Insurance Plan are the Hospital and Lafayette Life Insurance Company.

The Hospital established a Disability Insurance Plan on January 1, 1992, that provides benefits equal to 70% of the employees' income after the eighth day of illness for up to thirteen weeks for active, full-time Hospital employees. The Hospital pays the full premium on a group insurance policy that is provided by Business Men's Assurance Company of America (BMA). The Hospital and BMA are the administrators for the plan.

The Hospital established on September 1, 1988, a flexible benefits program providing dependent care assistance and medical care reimbursement (the Section 125 Plan) for active, full-time Hospital employees. The Hospital and its appointees are the administrators of the Section 125 Plan, and the Hospital pays all plan administrative costs.

Employee contributions to the plan for life and health insurance are set by premium price, and unreimbursed medical and dependent care accounts are capped at \$5000 per year.

The Hospital established a profit-sharing retirement plan on January 1, 1984. The Hospital and its appointees are the plan administrators, and the Hospital is the sole contributor to the plan. Hospital employees are eligible to participate in the plan if they are at least 20 1/2 years old, have worked six months for the Hospital, and complete at least 1,000 hours of service in a plan year.

The State of Kansas established the State of Kansas Deferred Compensation Plan (the Section 457 Plan) pursuant to section 457 of the Internal Revenue Code on July 1, 1980, and authorized local government employers to adopt the Section 457 Plan pursuant to Kansas House Bill No. 3054 of the 1982 Session. The Hospital executed a Plan Joinder Agreement and a State of Kansas - Master Group Variable Annuity Contract Joinder Agreement with the State of Kansas on July 1, 1994, and thereby adopted the Section 457 Plan for the Hospital employees. By the agreement, the Hospital was authorized to become a "joint contractowner" with the State of Kansas of the annuity contract issued by Aetna Life Insurance and Annuity Company in connection with the Section 457 Plan. Thus, the Hospital and the State of Kansas are joint administrators of the Section 457 Plan. The plan is funded solely by Hospital employee contributions.

Section 4(b)(1) of ERISA excludes governmental plans from coverage under Title I of ERISA. Section 3(32) of ERISA defines the term "governmental plan" to include "a plan established or maintained for its employees by the Government of the United State, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing."

Based on the above representations, all of the Plans provide either welfare benefits that are specified in ERISA section 3(1)<sup>3</sup> or pension benefits described in ERISA section 3(2)(A). Additionally, we conclude that the Plans were established or are maintained by the Hospital for its employees.

Accordingly, as pertinent to these facts, the Plans will be considered governmental plans, if the Hospital is an agency or instrumentality of the State of Kansas or a political subdivision, agency, or instrumentality thereof, within the meaning of section 3(32) of Title I of ERISA.

The terms "agency" and "instrumentality" are not defined in ERISA; nor are there any regulations under ERISA that interpret those terms. The specific facts and circumstances of the relationship between the particular entity and the government must be examined to determine whether the entity is an "agency or instrumentality" as required in section 3(32).

Based on the facts, representations described above, and on the documents provided, we find that the Hospital is a public entity, owned by Franklin County, and established pursuant to a state statute. The Hospital's statutory purpose is to provide health care services to the public. The Hospital exercises governmental powers, including the right of eminent domain, and the Hospital's property and revenues are exempt from federal, state, and local taxes. The Hospital is controlled and supervised by trustees appointed and governed by the elected Commissioners of Franklin

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<sup>3</sup> An employee welfare benefit plan within the meaning of ERISA section 3(1) may provide, in addition to benefits specifically set forth in section 3(1), benefits not specifically set forth in that section, such as the dependent care assistance described as part of the Section 125 Plan. The use of the phrase "to the extent" in section 3(1) indicates that an entity may provide a combination of benefits described in section 3(1) and benefits not described in that section without altering the nature of the plan as an employee welfare benefit plan subject to the provisions of Title I of ERISA

County, a political subdivision of the State of Kansas. Franklin County is responsible for the financial obligations of the Hospital and has exercised the county's authority to levy a tax to fund the Hospital's obligations.

It is therefore the opinion of the Department of Labor that the Hospital is a governmental agency or instrumentality within the meaning of ERISA section 3(32) and that the Plans are governmental plans within the meaning of that section. Accordingly, the Plans are excluded from ERISA Title I coverage pursuant to section 4(b)(1) of ERISA. We note that this determination applies only to the benefit arrangements described herein for Hospital employees; 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, as a subscriber, provides benefits under the Plans.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions. This letter relates solely to the application of the provisions of Title I of ERISA and is not determinative of any particular tax treatment under the Internal Revenue Code.

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations