

**U.S. Department of Labor**

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



NOV 25 1987

87-07A  
Sec. 3(32), 4(b)(1)

Mr. David T. Shelton  
El Centro Regional Medical Center  
1415 Ross Avenue  
El Centro, California 92243-4398

Dear Mr. Shelton:

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 a voluntary deferred compensation plan (the Plan) for employees of El Centro Community Hospital d/b/a El Centro Regional Medical Center (the Hospital). Specifically, you request an advisory opinion that the Plan is a governmental plan within the meaning of section 3(32) of title I of ERISA and, thus, is excluded from coverage under title I of ERISA by section 4(b)(1).

Your correspondence contains the following facts and representations. The Hospital was established in 1957 under section 37600 *et seq.* of the California state code as a municipal hospital of the City of El Centro (the City). The City owns and operates the Hospital. The City Council originally appointed a Hospital Board of Trustees serving without compensation to manage the Hospital. However, from time to time and as recently as 1982, the City Council temporarily repealed the Board of Trustees form of governance and took over active governance of the Hospital. Subsequently, by City Council resolution dated October 2, 1985, retransfer of Hospital governance to a Board of Trustees was effectuated, leaving unchanged the Hospital's then current arrangements for employee compensation and benefits. Regardless of the form of governance in effect, the City treasurer acts as Hospital treasurer and Hospital property is acquired in the name of the City. The City attorney provides legal representation for the Hospital, bringing suits involving Hospital property and defending them in the name of the City. You submitted an April 2, 1986, letter from the City attorney stating that the City is ultimately responsible and liable for the financial obligations of the Hospital and can levy taxes to meet City financial obligations.

The Plan which is the subject of this opinion is a voluntary deferred compensation arrangement established by resolution of the City Council on September 28, 1983. The Plan is administered by an advisory committee. By resolution of the City Council, the Hospital administrator holds an appointment to the advisory committee and appoints the remaining two members of the committee. Although the Plan is open to all 350 full-time Hospital employees you indicate that

only about 25 Hospital employees currently participate. You represent that, while the Hospital employees do not participate in the City's personnel system or the City retirement system, the Hospital employees are City employees.

Section 4(b)(1) of title I of ERISA excludes governmental plans from coverage under title I of ERISA. Section 3(32) of title I of ERISA defines "governmental plan" to include, in pertinent part, "...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..."

Because the Hospital is owned, operated, and controlled by the City, which is a political subdivision, and because the City is ultimately responsible for the financial obligations of the Hospital, it is the view of the Department that the hospital would constitute an agency or instrumentality of government, (i.e., the City) for purposes of section 3(32) of title I of ERISA. Because the Plan is maintained by the Hospital, as an agency or instrumentality of the City, for its employees, all of whom are represented to be City employees, it is the view of the Department that the Plan constitutes a governmental plan within the meaning of section 3(32) of ERISA. Accordingly, the Plan is excluded from coverage under title I of ERISA.

Inasmuch as the provisions of title I of ERISA would not apply to the Plan, we have not responded to your inquiry relating to section 5.08 of the Plan, which permits the Employer to secure an employee's Plan benefits in satisfaction of unpaid debts to the employer upon termination of employment. In this regard, you may wish to contact the Internal Revenue Service for guidance on the effect of the provision and/or its implementation on the status of the Plan and/or its participants under the Internal Revenue Code.

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,

Elliot I. Daniel  
Associate Director for Regulations and Interpretations