

**U.S. Department of Labor**

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



87-08A  
Sec. 3(32), 4(b)(1)

Nov 25, 1987

Mr. David K. Lauritzen  
Richards, Brandt, Miller & Nelson  
CSB Tower  
50 South Main  
Suite 700  
P.O. Box 2465  
Salt Lake City, Utah 84110

Dear Mr. Lauritzen:

This is in reply to your request on behalf of the Utah Interlocal Educational Benefits Trust (the Trust) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Employees' 401(k) Salary Reduction Retirement Plan and Trust (the 401(k) Plan). Specifically, you request an advisory opinion concerning whether the "governmental plan" definition in section 3(32) of title I of ERISA is applicable to the 401(k) Plan.

Your request contains the following facts and representations. The Trust was formed May 28, 1985 pursuant to the Utah Interlocal Cooperation Act, Utah Code Ann. §11-13-1, et. seq. by several school districts and public educational agencies as a governmental entity to provide certain benefits for the employees of such members. One of the specific purposes of the Trust is the sponsorship of the 401(k) Plan as an alternative to the 401(k) plan sponsored by the Utah State Retirement System.

On April 9, 1986, the Trust obtained an informal opinion from the Utah Attorney General's Office recognizing the Trust's status as a governmental entity under the laws of the State of Utah. Each school district or public educational agency participating in the Trust appoints a representative to the Trust's Board of Governors which in turn elects members to the Administrative Board of the Trust.

Parties eligible to participate voluntarily in the 401(k) Plan are defined in the document creating the 401(k) Plan to include individuals employed by the school districts, individuals employed by public educational agencies which participate in the Trust, and individuals employed by the Trust itself. Contributions to the 401(k) Plan are made exclusively through salary reduction agreements entered into by the participating employees.

All school district employees participating in the 401(k) Plan are automatically members of the Utah State Retirement System. You represent that the election open to the Trust to have its

employees covered by the Public Employees Noncontributory Retirement Act, Utah Code Ann. §49-10a, et seq., is an indication of the "governmental" status of its employees since only a "political subdivision" of state or local government would be able to exercise such an election. Accordingly, you state that if the appropriate election were made, Trust employees would be able to participate in a state retirement system as well as voluntarily participate in the Trust's 401(k) Plan.

Section 4(b)(1) of ERISA excludes governmental plans from coverage by title I of ERISA. Section 3(32) of title I of ERISA provides that the term "governmental plan" means "... 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...."

Based on your representation, it appears that the Trust was established and is maintained by school districts and public educational agencies who, as political subdivisions of the State of Utah, are governmental employers. Further, you state that the Utah Attorney General has recognized the Trust as a governmental entity. Finally, you represent that the Trust provides a program of benefits for individuals who are governmental employees, namely employees of the Trust itself, employees of public educational agencies that participate in the Trust, and employees of school districts. Thus, in the view of the Department of Labor (the Department), the 401(k) Plan maintained through the Trust constitutes one or more governmental plans within the meaning of section 3(32) of title I of ERISA. Accordingly, the 401(k) Plan would be excluded from coverage under title I of ERISA by reason of section 4(b)(1) of the Act.

You should note that the Department's finding in this regard is for purposes of title I of ERISA only. You may wish to consult with the Internal Revenue Service (IRS) as to whether the 401(k) Program maintained through the Trust constitutes a governmental plan within the meaning of section 414(d) of 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