

U.S. Department of Labor

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



AUG 24 1988

88-12A
Sec. 3(32), 4(b)(1)

Ms. Peggy O. Haines
Penn, Stuart, Eskridge & Jones
207 Piedmont Avenue
Post Office Box 2009
Bristol, Virginia 24203

Dear Ms. Haines:

This is in reply to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the money purchase plan (the Plan) of the Lee County Public Schools (Schools) is a governmental plan within the meaning of section 3(32) of title I of ERISA and is therefore excluded from coverage under that title by section 4(b)(1) of ERISA.

According to information furnished by you, Schools operates the public school system of Lee County, Virginia. Schools employs teachers and non-teachers who work in the school system. The Plan, established by Schools, was effective July 1, 1986. Although Schools made a contribution for the first plan year, the Plan has otherwise been dormant with no distributions made and no information regarding the Plan distributed. Coverage under the Plan was scheduled to change beginning July 1, 1988, to include all custodians and teachers' aides, approximately 160 employees. The Plan, which covers only employees of Schools, is funded solely by Schools.

Section 4(b)(1) of title I of ERISA excludes from coverage under that title any governmental plan described in section 3(32) of ERISA. Section 3(32) of ERISA defines the term "governmental plan" to include, in pertinent part, "... 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 the information you submitted, it is concluded that the Plan is established and maintained for its employees by the Lee County Public Schools, an agency or instrumentality of a political subdivision of the State of Virginia. Accordingly, it is the position of the Department of Labor that the Plan is a governmental plan within the meaning of section 3(32) of ERISA and is exempt from coverage under title I of ERISA pursuant to the provisions of section 4(b)(1).

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,

Robert J. Doyle
Acting Director of Regulations and Interpretations