

Pension Benefit Guaranty Corporation

81-3

March 4, 1981

REFERENCE:

4021(b)(2) Plans Covered. Government Plans

OPINION:

This is in response to your inquiry as to whether the above-referenced pension plan (the "Plan") is subject to the provisions of Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). We have concluded that the Plan is not subject to the provisions of that Title.

As you have represented the facts, the * * * (the "Council"), which maintains the Plan for its employees, consists entirely of elected government officials of several * * * Indian tribes (the "Tribes"). The Council was established to coordinate the distribution on Indian reservations of funds provided by various federal, state, and private charitable programs. Over 90% of the funds distributed by the Council are provided by the federal government.

In considering the question of the applicability of Title IV to the Plan, we observe first that federal statutes are generally applicable to all American citizens, including Indians. Statutes assessing federal income tax, for example, have usually been deemed to apply to the incomes earned by American Indians.

Nonetheless, a number of statutes which affect the relationship [*2] of employers with their employees have been held not to apply to certain Indian tribal enterprises. The National Labor Relations Act of 1935 and the Occupational Safety and Health Act of 1970 are two such statutes. The principle involved in these determinations is that while the exercise by Indian tribes of their powers as sovereign nations is subject to limitation by action of Congress, legislation will not be presumed to limit tribal sovereignty in the absence of specific language stating that intent.

It is subject to these precepts that we examine the issue raised by your inquiry.

In utilizing the Council for the purpose of collaborating with federal assistance programs, the Tribes are acting as sovereign nations. The authority to structure the Council's relationship with its employees is an undoubted attribute of the Tribes' sovereignty. Title IV's provisions would, if applied to the Plan, palpably affect that relationship and thereby, to some degree, circumscribe the exercise of that sovereignty. The Title should not be presumed thus to limit the Tribes' exercise of their sovereign powers in the absence of specific language stating that intent. The Act contains no such [*3] specific language.

We conclude that Congress did not intend to extend Title IV coverage to plans maintained as a function of the Tribes' internal sovereignty and, accordingly, that the Plan is not subject to the provisions of the Title.

I trust this responds to your inquiry. If you have any further questions, please contact * * * of my staff at (202) 254-3010.

Henry Rose
General Counsel