

Pension Benefit Guaranty Corporation

81-40

December 9, 1981

REFERENCE:

[*1] 4021(b)(2) Plans Covered. Government Plans

OPINION:

This is in response to your request for a determination by the Pension Benefit Guaranty Corporation as to whether the above pension plan (the "Plan") is excluded from coverage under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") by Section 4021(b)(2) of ERISA, 29 U.S.C. § 1321(b)(2). Based on the present facts, we conclude that the Plan is not a governmental plan and thus is not excluded from coverage by that section.

As you have represented the facts, * * * was incorporated in 1962 by fifteen private citizens under the Missouri nonprofit corporation statute. * * * was established to operate municipal facilities for the furnishing of free medical care to indigent residents of * * * City. The facilities operated by * * * are leased to it. * * * Board of Directors is comprised of 47 individuals, seven of whom represent and are selected by * * * City and seven of whom represent and are selected by * * * County. Thus, the majority of Directors do not represent interested governments. More than half of * * * revenues are derived from sources other than state, county, and municipal subventions. * * * employees [*2] are treated as nongovernmental for purposes of the Social Security program.

In 1963 the Internal Revenue Service determined that * * * was a "wholly-owned instrumentality of * * * City." However, by letter dated December 2, 1980, the Labor-Management Services Administration of the Department of Labor (the "DOL") notified * * * of its determination that * * * is not a governmental agency or instrumentality and that, therefore, the Plan is not excluded from coverage under Title I of ERISA (which the DOL administers).

It appears to us that the Authority is not a governmental agency or instrumentality within the meaning of Section 4021(b)(2) and, therefore, that the Plan is covered by Title IV.

This letter constitutes an initial determination by the PBGC which is subject to reconsideration pursuant to the PBGC's Administrative Review Regulation, 29 C.F.R. § 2618, a copy of which is enclosed. As provided in Subpart C of the Regulation, any request for reconsideration must be filed within thirty (30) days of the date of this letter.

I hope I have been of assistance. If you have any questions, please contact the attorney assigned to this case, * * * at (202) 254-3010.

Henry Rose [*3]
General Counsel