

Pension Benefit Guaranty Corporation

81-23

August 14, 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 (the "Act") by Section 4021(b)(2) of the Act. We conclude on the information at hand that the Plan is a governmental plan and thus is excluded from coverage by that section.

As you have represented the facts, the Board of Public Utilities, the Plan sponsor, was created by the City of * * * (the "City") for the purpose of administering and operating the City's waterworks system and the City's electric power system. Pursuant to the City's Charter, the City's Board of Commissioners appoints, and may remove, the members of the Board of Public Utilities. Authority for creation of the Board of Public Utilities is derived from a State statute authorizing the establishment of municipal utility boards.

All of the revenues of the Board of Public Utilities are derived from payments by users of water and electricity. Water rates are set by the City Council and electric power rates by the Tennessee Valley[*2] Authority. The * * * office of the Old Age and Survivors Insurance Agency has advised us that it deems the Board of Public Utilities to be governmental and hence entitled to opt out of coverage under the Social Security Old Age and Survivors Insurance program. The Tennessee Department of Employment Security has advised us that the Board of Public Utilities is deemed to be governmental for purposes of the unemployment compensation program and hence is entitled to reimburse the State of * * * for actual costs of unemployment compensation in lieu of payment of payroll taxes.

Based on the above, we have determined that the Authority is a governmental agency or instrumentality within the meaning of Section 4021(b)(2) and, therefore, that the Plan is not covered by Title IV.

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
General Counsel