

Pension Benefit Guaranty Corporation

81-31

September 22, 1981

REFERENCE:

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

OPINION:

This is in response to your request for a reconsideration of the determination that the above pension plan (the "Plan") is covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). Upon reconsidering the matter with the additional information you submitted, we have concluded that the Plan is excluded from coverage under Title IV of ERISA.

Section 4021(b)(2) of ERISA, 29 U.S.C. § 1321(b)(2), excludes from Title IV coverage any plan "established and 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"

As you have represented the facts, the * * * is a "public trust" with the City of * * * Oklahoma as the exclusive beneficiary, created pursuant to Sections 176 to 180 of Title 60, Oklahoma Statutes. These statutes provide for the creation of trusts with municipalities as the beneficiaries for the purpose of furthering any authorized public function. Such a trust may be created only by the express approval of two-thirds (2/3) of the membership of the governing body [*2] of the beneficiary. 60 O.S. § 176(a). Public trusts may be terminated by agreement of the trustees and the governing body of the beneficiaries, with the approval of the Governor. 60 O.S. § 180. Public trusts are required to file a monthly report of all expenditures of bond proceeds with the governing board of the beneficiary. Public trusts must file with the State Auditor and Inspector an annual audit certified by the unqualified opinion of a certified public accountant, certified municipal accountant, or licensed public accountant.

Public trusts are not granted taxing authority and the beneficiary municipality is not responsible for the obligations of the public trust (60 O.S. § 177); a public trust, however, cannot create an indebtedness or obligation without approval by a two-thirds (2/3) vote of the governing body of the municipality. 60 O.S. § 176(d). Before a public trust may issue bonds, notes, or other evidence of indebtedness, it must file with the Secretary of State, a preliminary copy of the official statement, prospectus or other offering document pertaining to the issuance, unless statutory exceptions apply. 60 O.S. § 178.2. Bonds issued by a public trust as [*3] well as contracts for construction, labor, equipment, material, or repairs, must be awarded to the lowest and best bidder based upon open competitive bidding unless statutory exceptions apply. 60 O.S. § 176(e).

Although the Oklahoma statutes governing public trusts permit a significant amount of autonomy in the management of trust assets and the selection of trustees, the State of Oklahoma treats public trusts as its political subdivisions or agencies of such political subdivisions. Section 179, Title 60, Oklahoma Statutes, states that trustees of a public trust are an agency of the State and the regularly constituted authority of the beneficiary for the performance of the functions of the trust. Accordingly, trustees of a public trust are required to take the oath of office required of an elected officer. 60 O.S. § 178(a). Additionally, public trusts must file with the Secretary of State a list of all conflicts of interest which its trustees have disclosed. 60 O.S. § 178.8.

Meetings of trustees of all public trusts are open to the public to the same extent as is required by law for public boards and commissions. 60 O.S. § 178(d). The "Open Meeting Act" of Oklahoma at 25 [*4] O.S. § 304(1) defines the governing body of a public trust as a public body. Records of a public trust and minutes of all public trust meetings are open to inspection by the general public as are records of meetings of governmental agencies. 60 O.S. § 178(d); Op. Att. Gen. No. 76-373 (February 4, 1977.)

In 1978, Oklahoma adopted the Political Subdivision Tort Claims Act. This Act defined a political subdivision as, among other things, "a public trust where a city, town, school district or county is a beneficiary" 51 O.S. § 152(6). In 1979, the Oklahoma Legislature amended the statutes governing interest on judgments. The amended statute classifies a public trust of which the State of Oklahoma or a political subdivision thereof is a beneficiary as a political subdivision

of the State of Oklahoma, resulting in a lesser rate of interest on judgments against such entities. 12 O.S. § 727.

Oklahoma's Workers' Compensation laws address the coverage of public trusts under the section titled, "Coverage for certain public employees", which provides identical treatment for public trusts, counties, cities, and the State. 85 O.S. § 2b. Likewise, the unemployment compensation laws [*5] of Oklahoma treat public trusts as political subdivisions of the State.

The Supreme Court of Oklahoma in the case of *County Commissioners of Oklahoma County v. Warram*, 285 P.2d 1034 (Okl. 1955), held that since gifts to and income or profits derived by the state, or any county, city, town, or school district of the state were exempt from any form of tax, then trusts with one or more governmental entities as beneficiaries are exempt from any form of tax. The Attorney General of Oklahoma in his opinion number 77-106 rendered May 27, 1977, applied the statute which exempts from taxation gifts to and income or profits derived by the state or any county, city, town, or school district of the state to exempt public trusts from payment of sales and excise taxes.

Other federal agencies have determined that public trusts created under Oklahoma statutes are political subdivisions of the State of Oklahoma or an agency or instrumentality of such a political subdivision. The Internal Revenue Service in Revenue Ruling 57-151 held that income received by a public trust created under the Oklahoma Statutes would not be subject to federal income tax; it further held that mortgage bonds and [*6] debenture notes issued by the public trust would be considered as issued on behalf of the beneficiary of the public trust, a political subdivision, and therefore, interest paid on such bonds was exempt from federal income tax. Additionally, the United States Nuclear Regulatory Commission exempts the * * * from the payment of license fees on the grounds that the * * * is "an agency of a State or any political subdivision thereof."

On the basis of this information, we conclude that the * * * is a political subdivision of the State of Oklahoma or an agency or instrumentality of such a political subdivision within the meaning of Title IV of ERISA, and, consequently, that the Plan is not subject to the provisions of that title. If you have any questions, please contact * * * of my staff at (202) 254-4895.

Henry Rose
General Counsel