

Pension Benefit Guaranty Corporation

81-2

February 24, 1981

REFERENCE:

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

OPINION:

This is in response to your letter regarding coverage of the above terminated pension plan (the "Plan") under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). We have concluded that at the time of its termination the Plan was excluded from coverage under that Title.

Section 4021(b)(2) of ERISA 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 City of \* \* \*, Indiana (the "City") organized the \* \* \* Corporation (the "Corporation") in 1972, pursuant to the Indiana Urban Mass Transportation Act of 1965, Indiana Code 19-5-2-1 et seq. (the "Act"). Under the Act the Corporation is a municipal corporation of the State of Indiana, and as such it has the authority to levy taxes on property within the boundaries of the City. The Act requires that all members of the Corporation's Board of Directors be appointed by publicly elected officials [\*2] of the City. The exclusive purpose of the Corporation is to own and operate a mass transportation bus system in and about the City.

To effect its statutory purpose, the Corporation has contracted for \* \* \*, Inc. (the "management company") to manage the operation of the City's bus system. While the management company is a private corporation, its activities are greatly restricted by the contract. It may not engage in any corporate activity or business other than the operation of the bus system. Its income consists entirely of grants from the Corporation and operating revenues from the bus system, and any excess of its income over its expenses must revert to the Corporation. The management company's budget, its recommendations dealing with fare structures and bus routes, and its collective bargaining agreements are all subject to the approval of the Corporation.

The management company is responsible for the hiring and payment of the bus system's employees, who, during the Plan's active operation, included all of its participants. The management company also made contributions to the Plan and appointed the employer's representatives to the committee which administered it.

On [\*3] the basis of the information furnished us, we conclude that the Corporation is a political subdivision of the State of Indiana, and that its control of the management company's operation is so pervasive that the management company is an agency or instrumentality of the Corporation within the meaning of Section 4021(b)(2). We further conclude that the management company maintained the Plan for its employees within the meaning of that Section and, consequently, that the Plan was not, at the time of its termination, subject to the provisions of Title IV.

We note that this is not a determination as to the applicability to the plan of either Title I or Title II of the Act. Any inquiry relating to such a determination should be directed to the Department of Labor or the Internal Revenue Service, respectively.

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

Henry Rose  
General Counsel