[redacted]

[redacted]

JUN 12 1997

Employer Identification Number: [redacted]
Key District: [redacted]
Form: 1041
Tax Years: All years

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(9) of the Internal Revenue Code.

We make our ruling for the following reason(s): your plan closely resembles a savings arrangement and does not provide permissible "other benefits," the life insurance benefit you offer is not of the type contemplated in the regulations, and you do not meet the control test set forth in section 1.501(c)(9)-2(c)(3) of the Income Tax Regulations.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address questions concerning the filing of returns to your key District Director.

Sincerely,

(signed) [redacted]

[redacted]

Chief, Exempt Organizations
Technical Branch 4

Code	[redacted]	[redacted]				
Surname	[redacted]	[redacted]				
Date	6/11/97	6-11-97				

[redacted]

[redacted]

JAN - 7 1997

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(9) of the Internal Revenue Code.

You were created pursuant to Chapter [redacted] of the [redacted] Code to provide voluntary benefit programs for the benefit of members of the [redacted] (hereinafter the System). The Trustees of the System are responsible for the administration of these voluntary benefit programs. The assets of these programs are to be credited to the voluntary benefit fund, and are to be maintained entirely separate from the fire and police retirement fund. Neither fund may be used to subsidize any portion of the liabilities of the other fund. You have represented that, under [redacted] law, the fund thus created is a trust because it has trustees and specifically provides for the source of the corpus and the permissible beneficiaries.

You will provide funds to pay for post-retirement medical and life benefits. A member is any active member of the System, all of whom are police officers and firefighters employed by participating political subdivisions of the state. Benefits will be funded solely by employee contributions via payroll deduction. Employees elect the amount of their contributions in $[redacted] units. Active participants are those who have payroll deduction agreements in effect. Inactive participants are persons who cease to be members or who do not have payroll deduction agreements in effect. A separate account is maintained for each member. Quarterly, the fund is valued at current market value taking into consideration investment earnings, expenses charged, payments made, and changes in asset values. Individual accounts are adjusted to reflect the performance of the fund.

Benefits are largely at the election of the participant, and may include health insurance, long-term care insurance, and life insurance. Periodic payments may be made to insurers (or similar providers of benefits) in full or partial satisfaction of

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the participant's premium liability. Periodic payments may also be made directly to the participant in the form of reimbursement for premiums paid for health or long-term care benefits. Annually, the participant must provide verification to the plan administrator of his/her responsibility for such insurance premiums. Section 6.04(1)(a) of the plan provides that the entire interest of a participant will be distributed in substantially equal quarterly payments over a payment term elected by the participant. The participant may elect a payment term of the participant's life, the life of the participant and his spouse, the life expectancy of the participant, or the join life expectancy of the participant and his spouse. If the participant makes no election, the participant's interest will be distributed over the term which begins with the month benefits begin under the plan and ends the month before the month the participant attains age 65. There is a minimum quarterly payment of $[redacted].

Nonperiodic payments may be elected by participants for qualified medical expenses not covered by some other plan. Such payments require the participant to submit evidence of the expense incurred. Periodic payments will be adjusted as necessary to reflect any nonperiodic payments.

Upon the participant's death, a death benefit will be paid in a lump sum to the beneficiary. The amount of the death benefit equals the balance in the participant's account. Also, a participant may instruct the plan to purchase life insurance by signing the appropriate insurance company application form and electing to pay the premiums from his account. The participant must instruct the plan as to the insurance company and agent through which to purchase the insurance contract, the amount of the coverage, and whether any dividends are to be used to pay future premiums or to purchase additional coverage. Each such policy must designate the trustee as the owner of the policy for the benefit of the participant. The plan must complete the beneficiary designation as directed by the participant.

If the account of a participant is less than or equal to $1000, the entire account is payable to the participant (or his beneficiary) on the earlier of the participant's death or the date he ceases to be a member for any other reason.

You are governed by the same trustees as the System. The nine voting trustees consist of one active and one retired firefighter who are members of the pension system and who are selected by the governing body of [redacted], one active and one retired police officer who are members of the pension system and who are selected by the governing

[redacted]

body of [redacted], four city treasurers who are selected by the governing body of the league of [redacted] cities, and one citizen member who is elected by the other eight voting members. There are four nonvoting trustees who are members of the [redacted] legislature.

Section 501(c)(9) of the Code describes voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(c)(3) of the Income Tax Regulations provides that an organization must be controlled by its membership, by independent trustee(s) (such as a bank), or by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership. Whether control by or on behalf of the membership exists is a question to be determined with regard to all of the facts and circumstances, but generally such control will be deemed to be present when the membership (either directly or through its representative) elects, appoints or otherwise designates a person or persons to serve as chief operating officer(s), administrator(s), or trustee(s) of the organization. For purposes of this paragraph an organization will be considered to be controlled by independent trustees if it is an 'employee welfare benefit plan', as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (ERISA), and, as such, is subject to the requirements of Parts 1 and 4 of Subtitle B, Title I of ERISA.

Section 1.501(c)(9)-3(a) of the regulations provides, in relevant part, that the life, sick, accident, or other benefits provided by a voluntary employees' beneficiary association must be payable to its members, their dependents, or their designated beneficiaries. A voluntary employees' beneficiary association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in this section if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Section 1.501(c)(9)-3(b) of the regulations defines the term 'life benefits' to mean a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent. A 'life benefit' may be provided directly or through insurance. It generally must consist of current protection, but also may include a right to convert to individual coverage on termination of eligibility for

[redacted]

coverage through the association, or a permanent benefit as defined in, and subject to the conditions in, the regulations under section 79. A 'life benefit' also includes the benefit provided under any life insurance contract purchased directly from an employee-funded association by a member or provided by such an association to a member.

Section 1.501(c)(9)-3(d) of the regulations provides that the term 'other benefits' includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if it is intended to safeguard or improve the health of a member or a member's dependents, or it protects against a contingency that interrupts or impairs a member's earning power.

Section 1.501(c)(9)-3(f) of the regulations provides examples of nonqualifying benefits. Benefits that are not described in paragraphs (d) or (e) of this section are not 'other benefits'. 'Other benefits' do not include the provision of savings facilities for members. The term 'other benefits' does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement, or a benefit that is similar to the benefit provided under a stock bonus or profit-sharing plan. For purposes of section 501(c)(9) and these regulations, a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit-sharing plan if it provides for deferred compensation that becomes payable by reason of the passage of time, rather than as the result of an unanticipated event.

Section 1.501(c)(9)-3(g) of the regulations provides additional examples of these provisions. Example (2) describes a vacation plan funded by employer contributions pursuant to the terms of a collective bargaining agreement. Each covered employee is entitled, at his or her discretion, to contribute up to an additional $1,000 each year to the plan, which agrees in respect of such sum to pay interest at a stated rate from the time of contribution until the time at which the contributing employee's vacation benefit is distributed. In addition, each employee may elect to leave all or a portion of his/her distributable benefit on deposit past the time of distribution, in which case interest will continue to accrue. Because the plan more closely resembles a savings arrangement than a vacation plan, the benefit payable to the covered employees is not a 'vacation benefit' and is not an eligible 'other benefit' described in section 501(c)(9) and Sec. 1.501(c)(9)-3(d) or (e).

In American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. U.S. (850 F.2d 1510), the Court of Appeals for the 11th Circuit considered the "control test" of section 1.501(c)(9)-

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2(c)(3) of the regulations. In that case, the Association's directors were selected from among the pastors of affiliated churches, and each pastor was chosen by his congregation, which included school employees. However, neither the schools nor the pastors chose the pastors who sat on the board. Furthermore, although the employees participated in the selection of their congregation's pastor, the employees did so as members of the congregation, not as employees. Therefore, the employees' voting strength in the election of the pastor was diluted by the votes of congregation members who were not employees. Any potential control over the pastor was congregation control, not employee control. Moreover, even if there were employee control over the pastor this did not translate into control over the Association's board or over the Trust because the pastors did not select the board or the trustees. The control test was not met, and the organization did not qualify for exemption under section 501(c)(9) of the Code.

Your plan is funded entirely by employee contributions, in amounts elected by the participating employees. A separate account is maintained for each employee. Investment earnings are regularly allocated to each account. By making elections as to contributions, type of benefit, and payment terms employees can largely control the payment of funds from their accounts. Although you have stated that participants must submit proof of premium responsibility in order to receive periodic payments, the *amount* of such payments is, by the terms of the plan, based upon the amount in the account and the payment term elected by the employee. In all cases, participants will ultimately receive all amounts in their accounts, including investment earnings. This arrangement more closely resembles a savings arrangement than a medical or life insurance plan, and does not provide permissible "other benefits" within the meaning of section 1.501(c)(9)-3(d) of the regulations.

Furthermore, the life insurance benefit you offer by permitting participants to designate a life insurance policy is not of the type contemplated in the regulations. While section 1.501(c)(9)-3(b) permits benefits provided under any life insurance contract by an employee-funded association to a member, you are not providing a life insurance benefit to your members. Rather, you are acting merely as a fiscal intermediary in a transaction that is essentially between the participant and the insurance company. The participant selects the policy and the insurance agent, and determines how any dividends will be used. This benefit is not a permissible life benefit as defined in section 1.501(c)(9)-3(b) of the regulations.

Finally, you do not meet the control test set forth in section 1.501(c)(9)-2(c)(3) of the regulations. It appears that you may be a governmental plan as defined in section 3(32) of ERISA, and therefore not an 'employee welfare benefit

[redacted]

plan', subject to the requirements of Parts 1 and 4 of Subtitle B, Title I of ERISA. That being the case, you must be controlled by your membership, by independent trustee(s) (such as a bank), or by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, your membership.

The term "members" as used in section 501(c)(9) and the regulations thereunder generally refers to persons eligible to receive benefits under the plan. The equivalent term with respect to your plan is "participants." The four city treasurer trustees clearly do not represent participants, and participants play no role in their selection. While four of the remaining trustees are appointed by organizations that apparently represent police officers and firefighters, there is no requirement that they be participants, or be selected by participants, and they do not necessarily represent your participants. Like the organization described in American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. U.S., any voice your participants may have in the selection of trustees is diluted by the votes of non-participants. Furthermore, any voice they have is as members of two entirely unrelated organizations, not as participants in your fund.

Based on the foregoing, we rule that you are not exempt from federal income tax as an organization described in section 501(c)(9) of the Code.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

[redacted]

You will expedite our receipt of your reply by using the following address:

Internal Revenue Service
[redacted]
1111 Constitution Ave., NW
Washington, DC 20224

Sincerely,

[redacted]
Acting Chief, Exempt Organizations
Technical Branch 2

cc: [redacted]

Code	[redacted]	[redacted]		
Surname	[redacted]	[redacted]		
Date	11/2/97	12-2-97		