

## Publications

# Challenge to Governmental Plan Status of Hospital Plans Dismissed

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Challenges to the exemption from ERISA status of governmental and church plans have become increasingly common in recent years. As covered in a prior [Groom Alert](#), the same plaintiffs' lawyers that have been suing numerous church hospital plans, had also filed a complaint alleging that The Charlotte-Mecklenburg Hospital Authority had improperly operated several employee benefit plans as "governmental plans," and that the plans were in fact covered under and in violation of ERISA. On August 30, 2019, the Eastern District of North Carolina granted a motion to dismiss and entered judgment in favor of the defendants in that case, the *Charlotte-Mecklenburg Hospital Authority*. The court agreed with the defendants that the Authority is a "political subdivision" under the "governmental plan" definition in ERISA, and therefore exempt from complying with ERISA requirements. The court's reasoning is worth an examination by any government-related entity maintaining governmental plans exempt from ERISA or participating in a public retirement system.

## Relevant Statutory Background

Under ERISA, a "governmental plan" is "a plan established or 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." ERISA § 3(32). Plans meeting this definition are expressly exempt from ERISA requirements under ERISA § 4(b)(1).

## Plaintiffs' Complaint

The plaintiffs, who are all former employees of the Authority and participants in its employee benefit plans, filed their Class Action Complaint against the defendants on

November 19, 2018. At bottom, the plaintiffs alleged that the benefit plans at issue (specifically, a pension plan, 401(k) plan, and health plan) fail to meet the definition of “governmental plan” because they were established or are maintained by the Authority, which is not a “political subdivision” or an “agency or instrumentality” of a governmental entity. Consequently, the plaintiffs contend that the plans are not exempt from ERISA requirements.

As the plaintiffs claimed, not only did ERISA apply to the Authority’s employee benefit plans, but the Authority and other defendants were violating the statute in multiple ways. Specifically, the plaintiffs alleged claims (1) for a declaratory judgment that the plans are not “governmental plans”; (2) that the defendants breached fiduciary duties, failed to monitor fiduciaries, and faced co-fiduciary liability because the plans were operated out of compliance with ERISA; (3) that the defendants engaged in prohibited transactions with respect to the plans; (4) that the pension plan violates ERISA minimum funding, vesting, and disclosure requirements; and (5) that the 401(k) plan violates ERISA disclosure requirements. The plaintiffs sought a broad array of relief from the defendants, including declaratory and injunctive relief, revisions to plan disclosures, funding relief, disgorgement of profits, and attorneys’ fees.

As a side note, the plaintiffs were represented by a firm that has pursued substantially similar lawsuits against a host of religiously-affiliated healthcare organizations, in which the plaintiffs alleged that plans sponsored by those organizations failed to meet the definition of “church plan” under ERISA. The plaintiffs in these church plan cases alleged that the plans were regulated by ERISA and violated the statute in many of the same ways raised in the plaintiffs’ complaint in *Shore*.

## The Authority’s Motion to Dismiss

On February 23, 2019, the Authority filed a motion to dismiss the plaintiffs’ complaint, which other defendants joined. The Authority contended that the complaint should be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), and/or for failure to state a claim under Rule 12(b)(6). In particular, the Authority argued that its plans meet the definition of governmental plans because the Authority is a “political subdivision,” or in the alternative an “agency or instrumentality” of a government entity. The defendants argued that, accordingly, the Authority’s plans are exempt from ERISA, and all of the plaintiffs’ allegations of ERISA violations fail.

## The Court’s Decision

The court began by accepting the defendants’ request to take judicial notice of the Authority’s governing statute, its articles of incorporation, a private letter ruling from the Internal Revenue Service, and additional publicly available documents. The court also noted background facts about the Authority, including:

- The Authority was created by the City of Charlotte in 1943, pursuant to a North Carolina state statute titled the Hospital Authority Act;
- The Authority is registered as a “municipal” body;
- The Authority is governed by the Board of Atrium Commissioners, who were all originally appointed by the Mayor of Charlotte;
- New board members are appointed by the Chairman of the County Commissioners, who reviews a list of nominees prepared by the board but who can ask for additional nominees at any time;
- The Chairman can remove board commissioners for inefficiency, neglect of duty, or misconduct, after notice and hearing;
- The Authority is granted “all powers necessary or convenient to carry out the purposes” of the Hospital Authority Act
- The Authority has the power of eminent domain and may issue tax-exempt bonds; and
- The Authority is tax-exempt.

The court then applied these facts to the standard for a “political subdivision” under ERISA, as provided by the U.S. Supreme Court in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) (“*Hawkins*”). Specifically, the Supreme Court provided that “political subdivisions” are “entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.” The court also emphasized that the test is disjunctive, so an entity can meet the standard by satisfying either of the two prongs.

First, the court concluded that the Authority met the first *Hawkins* prong because “it was created by the state of North Carolina through a delegation of its authority pursuant to the [Hospital Authority Act].” The court rejected the plaintiffs’ argument that state law is not controlling and that, instead, the court should evaluate the Authority’s actual operations. The plaintiffs also argued that the Authority was actually created by a city resolution, but the court disagreed and provided that the state had delegated authority through the Hospital Authority Act.

Although the court having concluded that the Authority satisfied the first prong would be sufficient under *Hawkins*’ disjunctive test, the court went on to evaluate the second prong. The court cited case law providing that the second *Hawkins* prong is met “when public officials appoint and may remove the entity’s governing members.” The court noted that, because the Authority’s board are appointed and may be removed by the County Chairman, the Authority satisfied the second prong as well. The court also rejected the plaintiffs’ arguments that the Authority’s board needed to be appointed or removable by state officials rather than local officials, and that the Chairman had not actually ever exercised the power to reject board nominees.

Finally, the court rejected the plaintiffs’ argument that it should consider the Authority’s “actual operations and characteristics,” because the plaintiffs’ supporting case law preceded *Hawkins*. Moreover, contrary to the plaintiffs’ argument, the court noted that the Authority reflected multiple features of a political subdivision, such as the power of eminent domain and a broad grant of authority under state statute.

Because the court concluded that the Authority meets the governmental plan definition as a “political subdivision,” the court did not reach the defendants’ alternative argument that the Authority is an “agency or instrumentality” of a government entity.

## Key Takeaways

The complaint in *Shore* hinted that plaintiffs’ firms may be attempting to open a new front of cases against plans claiming exemptions from ERISA. Similar to lawsuits that have been filed against church plans, the *Shore* plaintiffs alleged that the Authority did not share characteristics of a political subdivision and, as a result, its employee benefit plans should have to meet ERISA requirements. However, the court closely followed Supreme Court precedent in *Hawkins*, which provides a discrete two-pronged test to determine whether an entity is a “political subdivision” for purposes of the governmental plan definition, looked to publicly available foundational documents, and resisted the plaintiffs’ efforts at expanding the test. This may bode well for any future cases against governmental plan sponsors whose foundational documents show clearly that the *Hawkins* test is met, but we will also need to see what steps the plaintiffs’ bar may take next. For now, it may be advisable for government-related entities that either sponsor their own governmental plans or participate in governmental plans as participating employers to review their structure with an eye towards how closely they satisfy the *Hawkins* test.

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