

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



AUG 22 1986

86-19A
Sec.

Mr. John P. Gallagher
Schubert, Bellwoar, Mallon & Walheim
1330 Two Penn Center Plaza
Philadelphia, Pennsylvania 19102-1890

Dear Mr. Gallagher:

This is in reply to your correspondence on behalf of the Sisters of St. Francis of Philadelphia (the Order) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the St. Agnes Medical Center (the Hospital) Defined Benefit Pension Plan (the Pension Plan) and Welfare Benefit Plans (the Welfare Plans). Specifically, you request an advisory opinion concerning whether the above plans constitute church plans within the meaning of section 3(33) of title I of ERISA and, accordingly, whether they are excluded from coverage under title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women established according to the tenets of the Roman Catholic Church (the Church). One of the main purposes of the Order is operating health care facilities. This activity furthers the Order's purpose of caring for the sick and infirm through works of a charitable nature. You represent that The Official Catholic Directory (P. J. Kenedy & Sons, New York) lists the Order as an agency, instrumentality, and/or institution operated by the Church in the United States. Accordingly, based on the group exemption under section 501(c)(3) of the Internal Revenue Code (the Code) granted to the United States Catholic Conference by the Internal Revenue Service in its letter dated September 2, 1981, you represent that the Order is exempt from tax under section 501(a) of the Code. The Order is associated with the Church by reason of sharing common religious bonds and convictions as evidenced by the listing of the Order in The Official Catholic Directory.

The Hospital was founded by the Order. The Hospital is operated and maintained by Franciscan Health Systems (Systems), a non-profit corporation, having as its sole member the Council of the Order (the Order's ruling body). Systems currently operates ten other non-profit hospitals founded by the Order.

The Pension Plan was established in 1973 for the benefit of lay employees of the Hospital. The Pension Plan has been maintained and operated under the authority of a Plan Committee whose

sole purpose has been administration of the Pension Plan. The Plan Committee consists of three members serving at the direction of the Board of Trustees of the Hospital which is in turn subject to the control of the Order. The Order also controls the members of the Plan Committee insofar as it has authority to appoint and remove such members from the Order. Members of the Plan Committee share common religious bonds and convictions with the Church. This association with the Church is assured by the fact that all three members of the Plan Committee are required to be members of the Order which is part of the Church.

To facilitate its sponsorship of various welfare benefit programs for employees of the Hospital, the Plan Committee has recently been termed the "Pension and Welfare Benefit Committee." While retaining its previous membership, association with the Church, and control by the Order both directly and indirectly (through the Hospital's Board of Trustees), the Plan Committee's sole responsibility has now been expanded to include provision of the following benefits for lay employees of the Hospital: hospitalization benefits, life insurance and accidental death and dismemberment benefits, long term disability, dental benefits, vision benefits, and opportunities for HMO membership.

We note that the Internal Revenue Service issued a ruling letter dated December 26, 1985, stating that the Pension Plan is a church plan within the meaning of Code section 414(e) defining the term "church plan" for purposes of the Code.

Section 4(b)(2) of ERISA excludes from coverage under title I of ERISA any plan which is a church plan as defined in section 3(33) of ERISA. The term "church plan" is defined in section 3(33) of ERISA, in pertinent part, as:

(33)(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

* * *

(C) For purposes of this paragraph--

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes--

* * *

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1954 and which is controlled by or associated with a church or a convention or association of churches;

* * *

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches. . . .

Based on the information you submitted, it is the position of the Department of Labor that the St. Agnes Medical Center Pension Plan and Welfare Plans are church plans within the meaning of section 3(33) of ERISA. Accordingly, such plan(s) are exempt from coverage under title I of ERISA pursuant to section 4(b)(2) of ERISA.

Accordingly, it would appear appropriate for the Pension and Welfare Committee to inform participants and beneficiaries of the inapplicability of the ERISA rights statements now contained in plan materials they receive.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations