

**U.S. Department of Labor**

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



DEC 4 1986

86-25A  
Sec.

Ms. Diane C. Sonderegger  
Kennedy, Holland, DeLacy & Svoboda  
Kennedy Holland Building  
10306 Regency Parkway Drive  
Omaha, Nebraska 68114

Dear Ms. Sonderegger,

This is in reply to your letter of April 22, 1986, and previous correspondence requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Health Services Retirement Plan and Trust (the Plan) is a church plan within the meaning of section 3(33) of title I of ERISA and therefore exempt from coverage under that title.

You advise that the Plan was initially established in 1963 by The Sisters of Mercy of the Union, in the United States of America, Province of Omaha (the Sisters) with restatements and name changes in 1976, 1979, and 1982. In 1979, Health System of Mercy, a new nonprofit corporation, became the sponsor of the Plan effective July 29, 1979, and effective May 13, 1982, another new nonprofit corporation, Catholic Health Corporation, became the sponsor. At present there are 33 employers participating in the Plan. Of these all but one, Share Care, Ltd., are nonprofit corporations listed in The Official Catholic Directory. Of the 5,924 participants in the Plan as of December 31, 1984, only one was an employee of Share Care, Ltd., a profit corporation formed by another participating employer to furnish a variety of health care related services. Share Care, Ltd. has a total of four employees.

You further advise that the Sisters, a religious order which is part of the Roman Catholic Church, provides education, furnishes health care, and operates health care facilities such as hospitals, nursing homes, and homes for the aged. Article Three, Section 1 of the 1976 amended articles of incorporation of the Sisters provides that, "Its operation shall be in compliance with the objectives and philosophy of the Sisters of Mercy of the Union, in the United States of America, a religious order of the Roman Catholic Church." Article Seven, Section 1 provides that management of the Sisters is to be accomplished by a Board of Directors, of not fewer than three in number, who shall be the Religious Executive Body of the Sisters.

Article Four of the articles of incorporation of the Health System of Mercy provides that, "Its operation shall be conducted in the context of the theology, philosophy, other teachings and doctrines of the Roman Catholic Church and shall be in compliance with the objectives and philosophy of [the Sisters], a religious order of the Roman Catholic Church." Article Six provides that the members of the corporation, "...shall be composed of those Sisters of Mercy who hold the offices of the Provincial Administrator and her Council of [the Sisters]." Article Seven, Section 1 provides for a Board of Trustees to manage the corporation appointed by the membership.

Article Four of the articles of incorporation of the Catholic Health Corporation provides that, "Its operation shall be conducted in the context of the official teachings, disciplines and laws of the Roman Catholic Church." Article Six provides for two classes of membership. Class A (or Contributing Members) consists of any religious congregation of the Roman Catholic Church which transfers any or all of its health care assets to the Catholic Health Corporation. Class B (or Affiliate Members) consists of any religious congregation of the Roman Catholic Church which agrees by contract to accept the philosophy and governance from Catholic Health Corporation for any or all of its health care assets. Article Seven, Section 1 provides that the corporation will be managed by a Board of Trustees appointed by the members.

Article I, Section 1-4 of the Plan defines the term "Participating Employer" to include any corporation or entity which adopts the Plan subject to the approval of the Trustees. Article I, Section 1-16 defines "Trustees" as those persons appointed by the Employer. The Employer under Article I, Section 1-3 is Catholic Health Corporation.

You also submitted a copy of a letter dated February 18, 1986, from the Internal Revenue Service (IRS) in which the IRS ruled that the Plan is a church plan pursuant to section 414(e) of the Internal Revenue Code. This ruling is based on certain factors, such as the fact that the Plan is administered by a Board of Trustees whose purpose is the administration of the Plan and the assumption that such Board shares common religious bonds and convictions with the Roman Catholic Church.

Section 3(33) of title I of ERISA defines the terms "church plan" as follows, in relevant part:

(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.

(B) The term "church plan" does not include a plan--

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are

employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(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; and

\* \* \*

(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 your representations and the information you submitted, it is the position of the Department of Labor that the Health Services Retirement Plan and Trust is a church plan described in section 3(33) of ERISA. Accordingly, the Plan would be exempt from coverage under title I of ERISA pursuant to section 4(b)(2) of ERISA.

This opinion is based upon the fact that the number of participants in the Plan who are employed in connection with one or more unrelated trades or businesses is not substantial. Our position may change if additional profit corporations adopt the Plan or if the relative ratio of participants

employed in connection with unrelated trades or businesses increases to a point where it appears that the Plan is being maintained primarily for the benefit of employees who are so employed. Additionally, our position may change if under Article I, Section 1-4 of the Plan the Trustees approve one or more Participating Employers who do not share common religious bonds and convictions with the Roman Catholic Church.

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

Sincerely,

Elliot I. Daniel  
Associate Director for Regulations and Interpretations