

**U.S. Department of Labor**

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



MAY 10 1990

90-12A

Mr. John J. Hunter  
Stradley, Ronon, Stevens & Young  
2600 One Commerce Square  
Philadelphia, Pennsylvania 19103-7098

Dear Mr. Hunter:

This is in reply to your correspondence on behalf of Uihlein Mercy Center, Inc. (the Center) in Lake Placid, New York. Specifically, you request an advisory opinion concerning whether the Center's three employee benefit plans are church plans within the meaning of section 3(33) of title I of the Employee Retirement Income Security Act of 1974 (ERISA) and thereby excluded from the jurisdiction of the Department of Labor (the Department) by section 4(b)(2) of title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The New York Province of the Sisters of Mercy of the Union in the United States of America (the Order) is an unincorporated order of nuns organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). The order provides health care and related services in the communities it serves. Through its listing in The Official Catholic Directory (P. J. Kenedy & Son, 1987) the Order is entitled to exemption from tax in accordance with section 501(c)(3) of the Internal Revenue Code (the Code) pursuant to a group exemption letter issued to the United States Catholic Conference by the Internal Revenue Service (IRS) on June 11, 1987.

In furtherance of the Order's mission within the Church, the Order founded the Center. The Center is a skilled nursing facility established as a hospital and sanatorium to render medical and surgical aid and care to the needy, particularly to tuberculosis patients. The Center originally filed in 1946 as a membership corporation under New York law using the name Sanatorium Gabriels. The Center began using its present name when the corporation filed a certificate of name change on June 22, 1966. From 1946 to 1988, the Order's provincial administrator and its councilors provincial served as sole members of the Center corporation. On January 1, 1989, the Center joined the Eastern Mercy Health System (EMHS). EMHS is a not-for-profit membership corporation whose members are the major superior (or her designee) of eight provinces of the Religious Sisters of Mercy.\* As a consequence of joining EMHS, the Center's charter and bylaws will be amended to cause EMHS to be the sole member of the Center's corporation. Corporation membership annually elects the Center's board of directors. The board presently consists of eight members, four of whom are members of the Order. The Board assumes responsibility for control and management of the property and affairs of the Center. The Center is also listed in the Official Catholic Directory. Thus, the Center is also eligible to participate in the June 11, 1987, group ruling letter regarding Code section 501(c)(3) status as issued to the United States Catholic Conference.

The Center's benefit plans consist of a defined benefit pension plan, a health plan, and a life insurance plan. Since June 24, 1988, the Center's benefit plans have been administered by a benefit plan committee elected by the Center's board of directors. The sole purpose of the benefit plan committee is to control and manage the operation of the benefit plans. Members of the Order comprise a majority of the members of the benefit plan committee.

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\* The status of EMHS, except as sole member of the Center's corporation, and the status of any other benefit plan, other than those described below for Center employees, were not made the subjects of this advisory opinion.

Submitted in furtherance of your request for an advisory opinion were the following additional documents: a pension plan document and its accompanying group annuity contract, a hospital plan group contract, a medical and surgical care group contract, a group health care benefits contract, and a group term life and accidental death and dismemberment insurance policy. Also forwarded in connection with your request for advisory opinion was a private letter ruling issued by the IRS on June 13, 1989. The private letter ruling concludes that the Center's employee benefit plans are church plans within the meaning of section 414(e) of the Code.

Your request for an advisory opinion regarding "church plan" status involves application of the provisions of sections 4(b)(2) and 3(33) of title I of ERISA to the facts presented. 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:

(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; ...

...

(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 ...

It appears that the Order is an integral part of the Church by virtue of the religious and health care ministries it performs. Furthermore, the Order is tax exempt under section 501(c)(3) of the Code, is controlled by the Church, and is "associated with" the Church within the meaning of section 3(33)(C)(iv) of title I of ERISA insofar as the Order clearly shares common religious bonds and convictions with the Church.

Through the Order the Church retains control over the Center's operation insofar as members of the Order established the Center and the Center is controlled by the Order. Furthermore, the Center is "associated with" the Church, within the meaning of section 3(33)(C)(iv) of title I of ERISA, insofar as participation of individual members of the Order as the only corporate members of the Center, through EMHS or otherwise, assures that the Center adheres to the tenets and teachings of the Church and thus shares common religious bonds and convictions with the Church. In addition, the Center is exempt from tax in accordance with section 501(c)(3) of the Code.

Accordingly, it is the view of the Department that individuals employed at the Center are employees of an organization which is a civil law corporation and which is controlled by or associated with the Church within the meaning of section 3(33)(C)(ii)(II) of title I of ERISA. In accordance with section 3(33)(C)(iii) of title I of ERISA, the Church is deemed the employer of these individuals for purposes of the church plan definition in section 3(33).

Furthermore, in accordance with the church plan definition in section 3(33), the Church maintains each of the benefit plans which are the subject of this opinion through participation of members of the Order in the Center's benefit plan committee. The Order's appointment of its members to the benefit plan committee, which has as its principal purpose or function the administration of a plan for the provision of retirement benefits, assures that the plans established and maintained by the Center meet the requirement of section 3(33)(C)(i). While the presence of members of the Order as committee members assures that the Church controls each plan's administration, it also assures that each plan's administration is "associated with" the Church within the meaning of section 3(33)(C)(iv) insofar as participation of individual members of the Order in the benefit plan committee assures that the benefit plan committee adheres to the tenets and teachings of the Church and shares common religious bonds and convictions with the Church. Furthermore, the Center's plans do not appear to be excluded from the section 3(33) "church plan" definition by operation of sections 3(33)(B)(i) or (ii) of title I of ERISA.

For the above reasons and based on your representations, the Center's employee benefit plans constitute one or more church plans within the meaning of section 3(33)(A) of title I of ERISA by operation of section 3(33)(C)(i) of title I of ERISA. Because church plans described in section 3(33) of title I of ERISA are excluded from the requirements of title I of ERISA pursuant to section 4(b)(2) thereof, the Center's employee benefit plans are not required to comply with provisions of title I of ERISA administered by the Department and should inform plan participants accordingly.

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

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations