

U.S. Department of Labor

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



MAY 10 1990

90-13A

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 Gwynedd Mercy College (the College) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether several employee benefit plans for individuals employed at the College constitute church plans within the meaning of section 3(33) of title I of ERISA and, accordingly, whether the plans are excluded from the requirements of title I of ERISA by section 4(b)(2) thereof.

Your correspondence contains the following facts and representations. The Congregation of the Religious Sisters of Mercy in the City of Philadelphia (the Order) is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). One of the main activities of the Order is the operation of education facilities. Through its listing in The Official Catholic Directory (P.J. Kennedy & Sons) the Order is entitled to participate in a group exemption from tax granted to the Church in accordance with section 501(c)(3) of the Internal Revenue Code (the Code) as interpreted by the Internal Revenue Service (IRS).

In furtherance of the Order's mission within the Church, the Order founded the College. Originally incorporated by the Order in 1958, the nonprofit organization was then formally known as Schools of the Sisters of Mercy in Gwynedd Valley of which Gwynedd-Mercy Junior College appeared to be a part. In accordance with a formal resolution of the corporation's members in 1962, the College was renamed as it is presently known.

Members of the College corporation consist of the General Council of the Order elected by its membership. The business and affairs of the College are managed by a board of directors of which the Superior General of the Order is an ex officio member. Article V, section 1(b) of College bylaws requires that at least one-third plus one of the total number of seats on the board of directors be held by members of the Order. The College is also listed in The Official Catholic Directory and, thus, is also entitled to participate in the group tax exemption for the Church issued by the IRS pursuant to section 501(c)(3) of the Code on the same basis as does the Order.

Benefit plans for individuals employed at the College include a health benefit program; a group life insurance, accidental death and dismemberment, and long term disability program; a Code section 401(k) retirement program; and a tax-sheltered annuity program. You state that all plans are operated under the authority of a committee established by the College and termed the administrative committee. A majority of members on the administrative committee are members of the Order.

Forwarded with your request for an advisory opinion was a private letter ruling issued by the IRS on May 19, 1989. The private letter ruling concluded that the health plan and the retirement plans described above are church plans within the meaning of section 414(e) of the Code.

You may wish to note that the opinion below does not purport to determine the status of College health plans with respect to provisions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). You may wish to seek further information from the IRS concerning the coverage provisions of COBRA as they relate to employer group health plans since those provisions are within IRS jurisdiction.

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 of 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 operation of the College insofar as members of the Order established the College and the College is controlled by the Order.

Furthermore, the College 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 College assures that the College adheres to the tenets and teachings of the Church and, thus, shares common religious bonds and convictions with the Church. In addition, the College 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 College 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 College administrative committee. The Order's appointment of its members to the administrative committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement and other benefits, assures that the plans for individuals employed at the College 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 College administrative committee assures that this administrative committee adheres to the tenets and teachings of the Church and shares common religious bonds and convictions with the Church. Furthermore, the College 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, employee benefit plans of the College 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, College benefit plans are not required to comply with the 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 and accordingly, 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