

U.S. Department of Labor

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



FEB 26 1991

Mr. Robert D. Rothacker
Michael Best & Friedrich
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108

91-10A
ERISA SEC.
4(b)(2), 3(33)

Dear Mr. Rothacker:

This is in reply to your correspondence on behalf of St. Mary's Hospital, Inc. (the Hospital) 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 of the Hospital 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 Franciscan Sisters of Perpetual Adoration (the Order) is a religious congregation of women founded prior to 1900. Organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church), the Order was established to provide care of the sick as one of its main activities, operating hospitals and other health care facilities: nursing homes and halfway houses for individuals with alcoholism. Through its listing in The Official Catholic Directory (P.J. Kenedy & 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).

The Order founded the Franciscan Health System (the System) in furtherance of the Order's mission within the Church and, specifically, to centralize the operation of the Order's health care facilities. The System is a charitable tax exempt organization under section 501(c)(3) of the Code pursuant to its listing in The Official Catholic Directory and a letter to the Catholic Conference dated June 11, 1987, including within the letter's grant of tax exemption all entities listed in the Directory. The System is controlled by the Order insofar as the sole members of the System are the officers of the Order (president, vice president(s), secretary, and treasurer) and a member of the Order knowledgeable in corporation affairs and health ministry appointed by the Order's general board. The members of the System select the System's board of directors. Currently, seven of the thirteen board members of the System are members of the Order. The status of the System, except as sole member of the Hospital, and the status of any other benefit plan, other than those described below for Hospital employees, were not made the subject of this advisory opinion.

The System is the sole member of the Hospital. The Hospital is a general hospital and nursing home providing health care services in the City of Sparta, Wisconsin. The Hospital's board of directors is controlled by the Order through the System's selection and appointment of the members of the Hospital's board of directors. The System can remove the members of the Hospital's board of directors without the consent of any third party. For 1988, seven of thirteen directors appointed by the System are members of the Order. The Hospital is listed in The Official Catholic Directory and thus is a tax exempt entity under the Code.

The benefit plans which are the subject of your request are for individuals employed by the Hospital. It appears that individuals employed by entities connected with the Hospital (St. Francis Foundation, Inc. and St. Mary's Hospital Foundation, Inc.) are not participants in any of the benefit plans. The benefit plans include a money purchase pension plan, a section 403(b) tax-sheltered annuity account plan, and a savings plan for salary deferral.

Representations submitted include that all plans are administered through an administrative committee selected by the president of the Hospital. The Hospital's president and administrative committee are supervised by the Hospital's board of directors and the System. The sole purpose and function of the administrative committee is administration and supervision of the plans.

Forwarded with your request for an advisory opinion was a private letter ruling issued by the IRS on August 11, 1989. The private letter ruling concluded that the retirement plans described above 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 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 1986.

(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 1986), 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 1986 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 1986 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 it clearly shares common religious bonds and convictions with the Church.

Through the Order the Church retains control over operation of the Hospital insofar as members of the Order established the Hospital and the Hospital is controlled by the Order through the System. Furthermore, the Hospital is "associated with" the Church, within the meaning of section 3(33)(C)(iv) of title I of ERISA, through the Hospital's listing in the official Church directory since any entity listed in the directory is considered "associated" with the Church.

Furthermore, participation of members of the Order as the only corporate members of the System and the System's control over the Hospital assure that the Hospital adheres to the tenets and teachings of the Church and, thus, shares common religious bonds and convictions with the church. In addition, the Hospital is exempt from tax in accordance with section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with the Hospital constitute 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 is deemed to maintain each of the benefit plans which are the subject of this opinion through both the direct supervision of the plan administrative committee and the participation of members of the Order in the selection and supervision of the entities which select and supervise the Hospital's plan administration committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement and other benefits. Such involvement by the Order constitutes the type of "control" or "association" contemplated by section 3(33)(C)(i) of ERISA and, thus, the plans administered by such committee meet the criteria of section 3(33)(C)(i). Furthermore, Hospital plans do not appear to be excluded from the section 3(33) "church plan" 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 Hospital 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 Hospital's benefit plans are not required to comply with the provisions of title I of ERISA as 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