



March 24, 1992

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Kennedy Holland Building  
10306 Regency Parkway Drive  
Omaha, Nebraska 68114

**92-09A**  
ERISA SECTION  
3(33), 4(b)(2)

Dear Ms. Sonderegger:

This is in reply to your correspondence on behalf of Franciscan Healthcare Corporation of Colorado Springs (FHCCS) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the Franciscan Healthcare Corporation of Colorado Springs Retirement Plan (the Plan) constitutes a church plan within the meaning of section 3(33) of title I of ERISA and, accordingly, whether the plan is excluded from the requirements of title I of ERISA by section 4(b)(2) thereof.

Your correspondence contains the following facts and representations. FHCCS is a nonprofit corporation established in 1981 by the Poor Sisters of St. Francis Seraph of Perpetual Adoration, Province of St. Joseph (the Order). Originally founded in 1863, the Order exists today as the Sisters of St. Francis of Colorado Springs, a nonprofit civil corporation which holds the assets of the Order, and is a religious order of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). One of the main purposes of the Order is service to the poor and sick. Since its formation, the Order has founded a number of hospitals in furtherance of its religious purpose of tending the sick. Through its listing in The Official Catholic Directory (P.J. Kenedy & Sons) (herein- after, the Directory) 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 FHCCS in 1981, in furtherance of the Order's mission within the Church, as a nonprofit corporation to provide planning and management services for institutions affiliated with the Order in Nebraska, Colorado, and New Mexico. FHCCS is listed in the Directory and thus is a tax-exempt organization within the meaning of 501(c)(3) of the Code pursuant to the group exemption described above.

As a result of a merger effective July 31, 1989, with the Sisters of Charity Healthcare Systems Institutional Services, Inc., a nonprofit organization controlled by the Sisters of Charity of Cincinnati, Ohio, FHCCS is now controlled jointly by the Order and the Sisters of Charity of Cincinnati.

The sole members of FHCCS are the members of the board of trustees of the Order and of the Sisters of Charity Health Care Systems, Inc., an Ohio nonprofit corporation.<sup>1</sup>

In addition to FHCCS, eight other facilities operated by the Order participate in the Plan. Each one of five such participating entities operates under the control of its own separate nonprofit parent corporation/holding corporation whose members are the officers of the Order. The articles of incorporation or bylaws of each such participating entity provide that its corporate members are the directors of the nonprofit parent corporation/holding corporation. The remaining three participating entities are not separately incorporated from the Order.

For purposes of this opinion you have submitted the following facts and representations regarding entities other than FHCCS participating in the Plan. In 1882, the Order established St. Anthony Hospital a/k/a St. Anthony Hospital Systems of Denver, Colorado (Entity A). Entity A's nonprofit holding corporation is St. Anthony Healthcare Corporation. Entity A has a total of four acute care facilities and two rural emergency room community clinics and includes Alina Health Systems, Inc., a for-profit facility. Entity A is both listed in the Directory and has a separate letter issued by the IRS on July 11, 1983, indicating that it is tax-exempt under section 501(c)(3) of the Code. St. Anthony Healthcare Corporation has a separate letter issued by the IRS on September 23, 1983, indicating that it is tax-exempt under section 501(c)(3) of the Code.

In 1889, the Order founded St. Elizabeth Hospital in Lincoln, Nebraska. In 1969, the hospital's name was changed to St. Elizabeth Community Health Center (Entity B); its holding corporation is St. Elizabeth Health Systems. Entity B is listed in the Directory; St. Elizabeth Health Systems also claims nonprofit status.

In 1887, the Order founded St. Francis Hospital a/k/a St. Francis Hospital Systems in Colorado Springs, Colorado (Entity C). Its holding corporation is St. Francis Healthcare Systems of Colorado Springs. Entity C includes an acute care facility, a satellite emergency facility, and an outpatient care organization. Also associated with Entity C is St. Francis Ambulatory Care Systems, a corporation furnishing outreach services. Entity C is listed in the Directory; St. Francis Healthcare Systems and St. Francis Ambulatory Care Systems also claim nonprofit status.

Also in 1881, the Order established St. Francis Medical Center, Grand Island, Nebraska (Entity D). Entity D is operated by a nonprofit parent corporation, St. Francis Health Systems, Inc. Entity D is listed in the Directory.

In 1919, the Order founded Good Samaritan Hospital in Kearney, Nebraska (Entity E). Entity E is an acute care facility whose parent corporation is Good Samaritan Health Systems. In addition to Entity E, Good Samaritan Health Systems has both a nonprofit subsidiary (Richard H. Young Memorial Hospital of Kearney, Nebraska) and a for-profit corporation (Health System Enterprises, Inc.). Entity E is listed in the Directory; Richard H. Young Memorial Hospital of Kearney, Nebraska, has a separate letter issued by the IRS on February 8, 1985, indicating that it is tax-exempt under section 501(c)(3) of the Code.

In 1974, the Order founded St. Francis Gardens, Inc. in Albuquerque, New Mexico (Entity F). It is a nonprofit corporation formed to operate a nursing home facility and to promote community health in accordance with the principles of the Church. Entity F is listed in the Directory.

The Order also directly operates St. Clare Convent (Entity G). It is not a separately incorporated entity but has been functioning since 1976 when the nursing home it operates was established, primarily to care for older members of the Order. The Order's motherhouse in Colorado Springs, known as Mount St. Francis (Entity H), apparently is also not separately incorporated from the Order and serves members of the Order. Since not separately incorporated from the Order, Entities G and H appear to be under the control of the governing body of the Order.<sup>2</sup>

The Plan submitted in connection with your request is a defined benefit pension plan operated by the Order since January 1, 1965. Because the Order formed FHCCS, and for various other reasons you describe, the Plan has been restated several times, with the most recent restatement made effective January 1, 1985. In its present form the Plan consists of a master plan for which each participating entity other than FHCCS executes a supplemental participation agreement setting forth any variation from the Plan. A private letter ruling was issued June 30, 1989, by IRS "on the church plan status of the basic ... [Plan] document," determining that it constituted a church plan within the meaning of section 414(e) of the Code. In that private letter ruling, the IRS specifically declined to express an opinion regarding the church plan status of any plans as altered by the supplemental agreements.

You state that the Plan is operated under the authority of a Plan Administrator and a Plan Committee appointed by FHCCS. As of the date of submission of your request, the Plan Committee consisted of two members of the Order and an employee of the Sisters of Charity Health Care Systems of Cincinnati who is a lay person. You describe the sole function of the Plan Committee as carrying out administrative responsibilities regarding the Plan.

It further appears that the number of individuals participating in the Plan who are employed by for-profit entities connected with the System is at most 52 out of approximately 4600 total Plan participants.

The for-profit corporations employing individuals participating in the Plan are apparently Alina Health Systems, Inc., a for-profit subsidiary of St. Anthony Healthcare Corporation, and Health System Enterprises, Inc., a for-profit subsidiary of Good Samaritan Health System.

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) 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 the Order clearly shares common religious bonds and convictions with the Church.

Through the Order the Church retains control over operation of FHCCS insofar as members of the Order established FHCCS and FHCCS is controlled jointly by the board of trustees of the Order and by the Sisters of Charity of Cincinnati, Ohio, through their nonprofit corporation, Sisters of Charity Health Care Systems, Inc. Furthermore, FHCCS 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 board of trustees of the Order as members of FHCCS assures that FHCCS adheres to the tenets and teachings of the Church and, thus, shares common religious bonds and convictions with the Church. In addition, FHCCS is exempt from tax in accordance with section 501(c)(3) of the Code.

Insofar as it controls the Order, the Church also controls Entities G and H, which are not separately incorporated from the Order. Through the Order, the Church retains control over Entities A through F, which also have employees participating in the Plan, insofar as each such entity's members are the directors of one of several nonprofit parent corporations/holding corporations whose members are officers of the Order. Furthermore, insofar as other nonprofit subsidiaries of the nonprofit parent corporations/holding corporations are similarly composed, they are also controlled by the Church through the Order.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with FHCCS and with entities controlled by the Church through the Order, as described above, constitute employees of organizations which are 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 the Plan through control by the Order of FHCCS, which appoints the Plan Committee, and through participation of individual members of the Order in the Plan Committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement and other benefits, assuring that plans for individuals whose employment is with FHCCS and with entities controlled by the Order, as described above, meet the requirement of section 3(33)(C)(i). While the presence of members of the Order on the Plan Committee assures that the Church controls Plan administration, it also assures that Plan 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 Plan Committee assures that the Plan Committee adheres to the tenets and teachings of the Church and shares common religious bonds and convictions with the Church. The Church is further deemed to maintain the Plan through control of Entities A through H, without regard to whether those entities may have altered the terms of the Plan as applied to their employees.

Lastly, participation of up to 52 individuals in the Plan who are employed by for-profit corporations affiliated with the Order (and thus may be employed in connection with one or more unrelated trades or businesses within the meaning of Code section 513) compared with total Plan participation of approximately 4600 individuals does not appear to exclude the Plan, whether it is one or more church plans, 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 Plan appears to 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 Plan is 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. This letter relates solely to application of the provisions of title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Internal Revenue Code.

Sincerely,

Robert J. Doyle  
Director of Regulations  
and Interpretations

<sup>4</sup>It appears that the Sisters of Charity of Cincinnati, Ohio, is also a religious order of women organized within, and sharing common bonds and convictions with, the Roman Catholic Church and that the Sisters of Charity controls Sisters of Charity Health Care

Systems, Inc., an Ohio nonprofit corporation. FHCCS has two classes of membership. The sole class one member is the Sisters of Charity Health Care Systems, Inc. Class two members consist of the board of trustees of the civil corporation of the Order. FHCCS bylaws provide that its affairs are managed by a board of directors consisting of eight voting members: three members of the Sisters of Charity of Cincinnati, Ohio; one member of the Order; and four lay persons. The four lay persons are chosen by the other voting members of the FHCCS board of directors. There are also six non-voting lay members of the board.

<sup>2</sup> Entities G and H would also appear to share in the Order's tax exemption since they are not separately incorporated and the Order is listed in the Directory; however each entity is also listed separately in the Directory and, thus, each would also appear to be tax-exempt based on its own listing.