



January 12, 1993

Mr. Robert L. Abramowitz
Morgan, Lewis & Bockius
2000 One Logan Square, 18th Floor
Philadelphia, Pennsylvania 19103-6993

93-03A
ERISA SECTION
3(33), 4(b)(2)

Dear Mr. Abramowitz:

This is in reply to your correspondence on behalf of the Bernardine Sisters of the Third Order of St. Francis (the Order) concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). You request an advisory opinion concerning whether Sacred Heart Medical Center Inc. Retirement Plan (the Retirement Plan) constitutes a church plan within the meaning of section 3(33) of Title I of ERISA.

Correspondence and accompanying documents concerning the request for an advisory opinion identified above contain the following facts and representations. The Order is a religious congregation of women established by the Roman Catholic Church (the Church) according to the tenets of the canon law of the Church. Individuals who become members of the Order take vows of poverty, chastity, and obedience. The Order is governed by a general council (alternatively known as the general administration) composed of members of the Order who serve as the general minister (alternatively known as the president) of the Order and five members of the Order known as councillors who are elected every six years by the individual members of the Order. One of the significant activities of the Order is the operation of health care facilities to further the Order's healing ministry through works of a charitable nature. In accordance with its listing in The Official Catholic Directory (P.J. Kenedy & Sons, 1990) (hereinafter, Directory), the Order is included in the group tax exemption letter you submitted dated September 2, 1981, issued pursuant to section 501(c)(3) of the Internal Revenue Code (the Code) by the Internal Revenue Service (IRS) to the United States Catholic Conference.

The Order incorporated Sacred Heart Medical Center, Inc. (the Hospital) as a nonprofit corporation under Pennsylvania law. The Order's general council serves as the Hospital's only corporate members. The Hospital's corporate members may elect or remove members of the Hospital's board of trustees. The Hospital's board of trustees is composed of eleven or more members. You also represent that at all times Hospital trustees who are members of the Order are vested with the majority of votes on the Hospital's board of trustees and that the chairperson of the Hospital's corporate members is a member ex officio of the Hospital's board of trustees.

The Hospital is also listed in the Directory and thus is included in the group tax exemption issued by IRS to the Church as described above. Article VI, section 4, of Hospital bylaws provides that Hospital medical staff must practice in accordance with the moral teaching of the Church and the ethical and religious directives for Church health facilities.

Effective July 1, 1969, the Hospital established the Sacred Heart Medical Center Retirement Plan (the Retirement Plan) for its employees. The most recent amendment to the Retirement Plan was effective January 1, 1990, and provided for the Employee Benefits Committee (the Committee) to serve as administrator of the Retirement Plan. The IRS issued a letter to the Retirement Plan dated March 5, 1987, reaching a favorable conclusion on its qualified status under section 401(a) of the Code.¹

Section 1.16 of the Retirement Plan provides that the Retirement Plan is administered by the Committee. You represent that the Committee consists of five or more members appointed by the chairperson of the board of trustees or the chairperson of the Committee. You represent that, and it appears from the private letter ruling issued to the Retirement Plan by IRS on October 16, 1990, that a majority of members of the Committee are members of the Hospital's board of trustees. You also represent that in 1990, two members of the Committee were members of the Order. According to your representations, the entire Committee serves at the pleasure of the Hospital's board of trustees which serves at the pleasure of the Order's general council. Also, according to your representations, the sole and exclusive function of the Committee involves administration and funding of the Retirement Plan for employees of the Hospital and the administration and funding of welfare benefit plans for the same employees of the Hospital.

In view of the opinion of the Department expressed below concerning exclusion from Title I of ERISA of the Hospital's Retirement Plan, it would be appropriate to amend the Retirement Plan to clarify that neither the generally applicable requirements of Title I of the ERISA nor the specific provisions of Title I of ERISA concerning ERISA preemption of state law in section 514 of Title I of ERISA has any effect on its construction or administration, unless the Retirement Plan elects to be covered by Title I of ERISA under section 410(d) of the Code as referenced in section 4(b)(2) of Title I of ERISA.

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 follows:

(A) ... 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.

(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 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 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 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, as evidenced by its listing in the Directory.

The Church retains control over the Hospital through the Order insofar as the Hospital's corporate membership consists exclusively of members of the Order, and the Hospital's corporate membership may elect and remove all members of the Hospital's board of trustees. Through the Hospital's listing in the Directory and through the presence of members of the Order among its corporate membership, it is clear that the Hospital is "associated with" the Church within the meaning of section 3(33)(C)(iv) insofar as it clearly shares common religious bonds and convictions with the Church.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with the Hospital 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 is deemed to maintain the Plan through control by the Order of the Hospital's board of trustees, which in turn appoints the Committee which administers the plan for Hospital employees, assuring that the plan meets the requirements of section 3(33)(C)(i). Although the Committee also administers other employee benefit plans for these same employees of the Hospital, which are not the subject of this letter, it appears that the Committee has as its principal purpose or function the administration of employee benefit plans, including the Retirement Plan, which satisfies the requirements of section 3(33)(C)(i).

Control of the Committee by the Order through the Hospital's board of trustees, and the presence of members of the Order as Committee members, also assures that plan administration is "associated with" the Church within the meaning of section 3(33)(C)(iv), by sharing common religious bonds and convictions with the Church.

For the above reasons and based on your representations, it is the opinion of the Department that the Retirement Plan constitutes a church plan 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 Retirement Plan is not required to comply with the provisions of Title I of ERISA as administered by the Department. Accordingly, plan participants and beneficiaries should be informed of the inapplicability of Title I of ERISA, except insofar as the Retirement Plan elects to be covered thereby in accordance with section 410(d) of the Code as referenced in section 4(b)(2) of Title I of ERISA.

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 the 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

¹ Section 13.09 of the Retirement Plan document provides as follows:

Construction and administration of this Plan and of the Contract or Contracts with the insurer shall be governed by ERISA and other applicable Federal laws and, to the extent not governed by Federal laws, by Pennsylvania law.