



March 9, 1993

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

93-07A
ERISA SECTION
4(b)92), 3(33)

Dear Mr. Hunter:

This is in reply to your correspondence on behalf of the Pittsburgh Mercy Health System, Inc. (PMHS) concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether PMHS employee benefit plans constitute church plans within the meaning of section 3(33) of Title I of ERISA and, accordingly, whether they are excluded from the requirements of Title I of ERISA by section 4(b)(2) thereof.

Your correspondence and the materials you enclose contain the following facts and representations. The Religious Sisters of Mercy (the Order) is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). The Order has eight provinces, one for each geographic area of the United States in which the Order is represented. One of the provinces is the Sisters of Mercy of the County of Alleghany (the Congregation), which is itself a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Church. Both the Congregation and the Order are dedicated to providing health care facilities as one of their main charitable activities. Through their listings in The Official Catholic Directory (P.J. Kenedy & Sons) (hereinafter, the Directory), the Congregation and the Order are 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).

Eastern Mercy Health System (EMHS) is a Pennsylvania nonprofit corporation formed by the Order. The major superiors (or their designees) of each of the Order's eight provinces, including the major superior of the Congregation (or her designee) are the sole members of EMHS.<1>

The Congregation formed PMHS to promote and support its health care mission, a mission in accord with the traditions, teachings, and canon law of the Church. The principal purpose of PMHS is to advance, promote, and support the Congregation's health care facilities which, in turn, advance, promote, and support the health care mission of the Congregation. The sole member of PMHS is EMHS, and EMHS or the Congregation reserves certain powers and responsibilities over the board of directors of PMHS. PMHS was incorporated in 1983 as a Pennsylvania nonprofit entity. Pursuant to its listing in the Directory, PMHS is included in the group letter ruling issued by IRS to the U.S. Catholic Conference and is tax-exempt within the meaning of section 501(c)(3) of the Code.

The nonprofit corporations which are components of PMHS are Mercy Hospital of Pittsburgh (the Hospital), Mercy Hospital Foundation (the Foundation), and Mercy Life Center Corporation (the Center). PMHS is the sole corporate member of each. The Hospital and the Foundation are listed in the Directory and, consequently, are tax-exempt under section 501(c)(3) pursuant to the group letter ruling described above. The Hospital was originally incorporated in 1882. According to its bylaws, the Hospital's board of trustees may be composed of up to 25 members. The Hospital's bylaws also state both that approximately one-third of the members of the Hospital's board of trustees must be individuals who are members of the Congregation and that at least six of the Hospital's trustees must be individuals who are members of the Congregation. In addition, the bylaws list the president of the Congregation as an ex officio member of the board of trustees with full voting rights. The Foundation, according to its bylaws, has a board of trustees composed of from 9 to 24 members, of which approximately one-third must be individuals who are members of the Congregation. The Center, a nonprofit corporation, which was formed June 5, 1989, received a favorable ruling from IRS on its tax-exempt status dated April 16, 1990. Center bylaws state that its board of trustees may consist of from three to nine members, of which approximately one-third must be individuals who are members of the Congregation.

The Retirement Plan for PMHS Employees of Mercy Hospital of Pittsburgh (the Retirement Plan) covers employees of the Hospital, the Foundation, and the Center. The Retirement Plan is a defined benefit pension plan made effective January 1, 1967, by the Hospital, which maintains and sponsors it.<2> It was later adopted by the Foundation, PMHS, and the Center and qualified under Code section 401 (a) pursuant to a favorable determination letter issued by IRS on August 15, 1986.<3>

The Hospital also sponsors and maintains a group health program, a group dental care plan, a life insurance plan, a short-term disability plan, a long-term disability plan, and a business travel accident insurance plan (the Welfare Plans).<4>

A resolution of the Hospital board of directors dated March 16, 1989, delegated the authority to administer certain named plans (the Retirement Plan and all Welfare Plans named above except the dental plan) to the Hospital Benefits Committee (the Benefits Committee).

The Benefits Committee is selected by the boards of directors of PMHS, the Foundation, and the Hospital, respectively, each through its approval of a board of director resolution. Board of director resolutions also prescribe the Benefit Committee's duties and the rules governing the Benefit Committee's operation. A majority of Benefits Committee members must be members of the Congregation. The sole purpose of the Benefits Committee is controlling and managing the Retirement Plan and the Welfare Plans. Vacancies on the Benefits Committee are filled on an interim basis by its remaining members; permanent appointments to fill vacancies on the Benefits Committee are made by the Hospital.

Forwarded with your request for an advisory opinion was a private letter ruling issued by the IRS on May 14, 1990, concluding that the Retirement Plan and all plans designated above as Welfare Plans 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 PMHS health plans with respect to provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (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 follows:

(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 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 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 and the Congregation are integral parts of the Church by virtue of the religious and health care ministries they perform. Furthermore the Order and the Congregation are tax-exempt under section 501(c)(3) of the Code, are controlled by the Church, and are "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA insofar as they clearly share common religious bonds and convictions with the Church.

Through the Order and the Congregation the Church retains control over EMHS insofar as the Order and the Congregation established EMHS and EMHS is controlled by the Order and the Congregation. Furthermore, EMHS is "associated with" the Church, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, through participation of individuals who are members of the Order, including individuals who are members of the Congregation, as the corporate members of EMHS.

Through the Congregation, the Order, and EMHS, the Church retains control over PMHS and its component corporations insofar as EMHS, an entity controlled by the Congregation and the Order, is the sole member of PMHS and insofar as EMHS or the Congregation reserves certain powers and responsibilities over the board of directors of PMHS. Furthermore, PMHS and its component corporations are "associated with" the Church, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, insofar as participation of individuals who are members of the Congregation and the Order as sole corporate members of EMHS, which in turn constitutes the corporate member of PMHS, assures that PMHS adheres to the tenets and teachings of the Church and, thus, is "associated with" the Church insofar as PMHS shares common religious bonds and convictions with the Church. In addition, participation of individuals who are members of the Congregation on the board of trustees of the Hospital, the Foundation, and the Center, which are the component corporations of PMHS, assures both that the Church through the Congregation controls the Hospital, the Foundation, and the Center, and that the

Hospital, the Foundation, and the Center adhere to the tenets and teaching of the Church and, thus, are "associated with" the Church insofar as they share common religious bonds and convictions with the Church. Also, PMHS, the Hospital, the Foundation, and the Center are 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 PMHS or with its component corporations 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 Retirement Plan and the Welfare Plans through initial control by PMHS, the Foundation, and the Hospital of the Benefits Committee and through continuing control by the Hospital of the Benefits Committee. In addition, the Church is deemed to maintain the Retirement Plan and the Welfare Plans through participation of members of the Congregation in the Benefits Committee. The Benefits Committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement or other benefits, assures that the Retirement Plan and the Welfare Plans for individuals whose employment is with PMHS and its component corporations meet the criteria of section 3(33)(C)(i). While the presence of individual members of the Congregation on the Benefits Committee assures that the Church controls administration of the Retirement Plan and the Welfare Plans, it also assures that administration of the Retirement Plan and the Welfare Plans is "associated with" the Church within the meaning of section 3(33)(C)(iv) insofar as participation of individual members of the Congregation in the Benefits Committee assures that the Benefits Committee adheres to the tenets and teachings of the Church and shares 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 above-described Retirement Plan and Welfare Plans constitute one or more church plans within the meaning of section 3(33) 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 and the Welfare Plans for individuals whose employment is with the Hospital, the Foundation, and the Center 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. 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 Code.

Sincerely,

ROBERT J. DOYLE
 Director of Regulations
 and Interpretations

¹ We note that the status of EMHS, except as sole member of PMHS, and the status of any other benefit plan other than the Retirement Plan and the Welfare Plans for individuals whose employment is with PMHS, the Hospital, the Foundation, and the Center were not made the subject of your request for an advisory opinion.

We also note that employee benefit plans of EMHS were made the subject of ERISA Opinion 91-14A, an advisory opinion concluding that its benefit plans met the definition of a church plan within the meaning of section 3(33) of ERISA and that, although EMHS was the sole corporate member of entities whose benefit plans were the subject of ERISA Opinions 90-12A and 91- 22A, neither EMHS nor its benefit plans was made the subject of those ERISA Opinions.

² Documents submitted with your request for an advisory opinion pertaining to the Retirement Plan include the plan document and a trust agreement.

³ The following seven plans were named by IRS in its letter to PMHS dated May 14, 1990: the Retirement Plan, the Long Term Disability Plan, the Group Dental Care Plan, the Life Insurance Plan, the Short Term Disability Plan, the Group Health Insurance Plan, and the Business Travel Accident Insurance Plan.

⁴ Documents submitted with your request for an advisory opinion regarding welfare benefits include the Mercy Hospital Group Health Insurance Plan through Blue Cross/Blue Shield of Western Pennsylvania, Mercy Hospital's Hospital Medical-Surgical/Major Medical Benefits program through Metropolitan Life Insurance Company, Supplementary Material to the Hospital's Subscriber Agreement with Keystone Health Plan West-HMO, Supplementary Material to the Hospital's Subscriber Agreement with Healthamerica-HMO, the Hospital's Dental Plan with Metropolitan Life Insurance Company, the Hospital's Group Life Insurance Plan with Prudential Life Insurance Company of America, the Hospital's Long Term Disability Insurance Plan with UNUM Life Insurance Company of America, the Hospital's Short Term Disability Insurance Plan with Metropolitan Life Insurance Company, and Plan Information on the Hospital's Business Travel Accident Insurance Plan with Federal Insurance Company.