



March 9, 1993

Mr. John David Doverspike  
Duvall, McCumber & Doverspike  
One West Court Square, Suite 58  
Decatur, Georgia 30030

**93-08A**  
ERISA SECTION  
4(b)(2),3(33)

Dear Mr. Doverspike:

This advisory opinion is in reply to your correspondence concerning the Baptist Convention of the State of Georgia (the "Convention of Churches") on behalf of its Executive Committee. Specifically, you request an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to certain employee benefit plans for individuals whose employment is with Georgia Baptist Medical Center (the "Medical Center"), NewtonHouse Nursing Home ("NewtonHouse"), and Harvest Heights Nursing Home ("Harvest Heights"), which are collectively known as the Georgia Baptist Health Care System (the "System"), and, accordingly, whether the plans may be excluded from the requirements of Title I of ERISA by section 4(b)(2) thereof insofar as they constitute church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence contains the following facts and representations. The Baptist Church (the "Church") has been active in Georgia since the colonial era. The first organized association of Baptists, the Georgia Association, was established in 1784. It continues to exist today as one of 92 intrastate Church associations in Georgia. The first state-wide association of the Church based in the State of Georgia was the Convention of Churches. It was organized in 1822 and subsequently was chartered and incorporated by Georgia in 1830. The incorporated existence of the Convention of Churches was then and is now the Executive Committee of the Convention of Churches (the "Executive Committee"). The Convention of Churches is comprised of approximately 3,100 local Church congregations in Georgia and is itself one of 38 members of the Southern Baptist Convention, the national denominational organization to which the Convention of Churches belongs.

The control and direction of programs and ministries of the Convention of Churches rests with delegates from local Church congregations to the annual meeting of the Convention of Churches while that meeting is in session. Between annual meetings of the Convention of Churches, the Executive Committee carries on the business of the Convention of Churches.

The Executive Committee consists of 92 members elected from associations of local Church congregations comprising the Convention of Churches and 20 members elected "at large" from among individuals who are members of local Church congregations. The Executive Committee is empowered to own property, sue and be sued, receive bequests, and exercise all powers and privileges of a nonprofit corporation. Since December 20, 1934, the Executive Committee has had tax- exempt status in accordance with provisions of the Internal Revenue Code (the "Code") as interpreted by the Internal Revenue Service (the "IRS"). The Executive Committee's status as a tax- exempt entity has been affirmed by IRS on several occasions, most recently on December 28, 1984, in accordance with section 501(c)(3) of the Code.

The theological beliefs of the Convention of Churches include, but are not limited to, providing care for the sick, the elderly, and the poor. In keeping with this mission, the Executive Committee involves itself in the operation of health care facilities, including hospitals and homes for the elderly. Specifically, the Medical Center is a functional program or operating division of the Executive Committee and is a registered trade name of the Executive Committee under which it operates a hospital that is not incorporated or a separate legal entity; NewtonHouse and Harvest Heights are also registered trade names of the Executive Committee. Under the names NewtonHouse and Harvest Heights, the Executive Committee operates nursing homes that are not incorporated or separate legal entities.

The Executive Committee vests operational authority over the System in the Georgia Baptist Hospital Commission (the "Hospital Commission"). The Hospital Commission consists of eight commissioners elected by the Executive Committee from its own membership; the remaining commissioners are "at large" commissioners selected from among the membership of local Church congregations which are part of the Convention of Churches. The chief executive officer of the Executive Committee is the permanent secretary of the Hospital Commission. The Hospital Commission appoints a president and chief executive officer of the System. The chief executive officer of the System oversees the day-to-day operations of the System, including individuals whose employment is with these institutions. The chief executive officer of the System is responsible to, and reports to, the Hospital Commission, Executive Committee, and the Convention of Churches (when in session).

Listed in the annual publication of the Convention of Churches, the Georgia Baptist Digest, the Medical Center is an acute care hospital located in Atlanta, Georgia. It was originally founded in 1901 by a local Church congregation and was acquired by the Executive Committee in 1922. NewtonHouse and Harvest Heights are long term care facilities offering medical and nursing care for elderly patients. NewtonHouse is located in Atlanta, Georgia, adjacent to the Medical Center. Harvest Heights is also located in Atlanta, Georgia.

All employees in the System are employees of the Executive Committee. The Executive Committee employs, trains, supervises, evaluates, compensates, disciplines, and assumes liability (in the event of negligence) for such employees.

The Executive Committee maintains, on behalf of employees in the System, the Medical Center Retirement Plan (the "Retirement Plan") (a defined benefit pension plan) and the following welfare benefit arrangements: the Medical Center Health Insurance Plan, the Medical Center Short Term Disability Plan, the Medical Center Long Term Disability Plan, and the Medical Center Life Insurance Plan (collectively, the "Welfare Plans"). Although named for the Medical Center, according to your representations, the Retirement Plan and the Welfare Plans also cover individuals whose employment is with NewtonHouse or Harvest Heights but cover no additional employees.

You state that the Retirement Plan and the Welfare Plans are administered by a Benefits Committee appointed by the chief executive officer of the System. The Benefits Committee is currently composed of the System's chief executive officer, one of its vice presidents, its director of finance, and its director of human resources. All members of the Benefits Committee are employees of the Executive Committee. The sole purpose of the Benefit Committee is to administer the Retirement Plan and Welfare Plans. You represent that members of the Benefits Committee share common religious bonds and convictions with the Executive Committee and, based on your representations above, it appears they also share common religious bonds and convictions with the Convention of Churches.

Forwarded with your request for an advisory opinion was a private letter ruling issued by the IRS on June 12, 1990. The private letter ruling concluded that the Retirement Plan and the Welfare Plans are church plans within the meaning of section 414(e) of the Code. You also forwarded with your correspondence of July 22, 1991, a determination letter, dated December 4, 1990, from the Pension Benefit Guaranty Corporation, which concluded that the Retirement Plan is a church plan for purposes of section 4021 (b)(3) of Title IV of ERISA.

You may wish to note that the opinion below does not purport to determine the status of the Welfare 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:

(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 convention or association of churches includes a plan maintained by an organization, whether a civil law corporation 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 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 Convention of Churches is a "church" or "a convention or association of churches" within the meaning of section 3(33). It also appears that the Convention of Churches through the Executive Committee, the corporate existence of the Convention of Churches, operates the System directly insofar as the Executive Committee elects members of the Hospital Commission from its own membership and selects the remaining members from among members of local Church congregations, and the Hospital Commission, in turn, selects the president and chief executive officer of the System. We are assuming, for purposes of this opinion, that the System shares in the tax-exempt status of the Executive Committee under section 501(c)(3) of the Code because it is not a corporate or legal entity separate from the Executive Committee, the corporate existence of the Convention of Churches.

Furthermore, the System is "associated with" the Convention of Churches, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, insofar as both individual members of the Executive Committee and individual members representing local Church congregations of the Convention of Churches participate in the Hospital Commission, thus assuring that the System shares common religious bonds and convictions with the Convention of Churches.

Accordingly, it is the view of the Department of Labor (the "Department") that individuals whose employment is with the System constitute employees of an organization which is a civil law corporation and which is controlled by, or associated with, a church or convention or association of churches 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 Executive Committee as the corporate existence of the Convention of Churches is deemed to be 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 Executive Committee (as the corporate existence of the Convention of Churches) is deemed to maintain the Retirement Plan and Welfare Plans through appointment of the members of the Benefits Committee by the System's chief executive officer, who is, in turn, selected by the Hospital Commission, whose members are elected by the Executive Committee from among its membership or selected from the membership of local Church congregations. Also, in accordance with your representations, the members of the Benefits Committee share common religious bonds and convictions with the Convention of Churches, and the Benefits Committee has as its principal purpose or function the administration of a plan or plans for the provision of employee retirement and other benefits. Accordingly, on the basis of your representations, the Retirement Plan and the Welfare Plans are plans described in section 3(33)(C)(i) of Title I of ERISA.

For the above reasons and based on your representations, it is the view of the Department that the Retirement Plan and the Welfare Plans 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 Retirement Plan and Welfare 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. 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 Code.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations