



March 17, 1994

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

94-08A
ERISA SECTION
3(33),4(b)(2)

Dear Mr. Abramowitz:

This is in reply to your correspondence on behalf of The Nazareth Hospital (hereinafter, the Hospital) in Philadelphia, Pennsylvania, which is an institution of the Congregation of the Sisters of the Holy Family of Nazareth, Immaculate Conception Province (hereinafter, the Order). Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether benefit arrangements for employees of the Hospital are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women established according to the tenets of canon law of the Roman Catholic Church (the Church). Individuals who become members of the Order take vows of poverty, chastity, and obedience.

The Order is governed from its provincial house in Philadelphia, Pennsylvania, by a provincial council consisting of a provincial superior and four provincial councillors (hereinafter, the Order's governing body). The Order's governing body comprises members of the Order elected by its membership.

One of the Order's main activities is operating health care facilities to further the Order's mission within the Church, including healing and responding to the needs of families. In furtherance of its mission within the Church, the Order established the Hospital in 1940 and later incorporated it as a Pennsylvania nonprofit corporation.

You represent that the Hospital is subordinate to the Order in several ways. First, members of the Order's governing body serve as the corporate members of the Hospital. Acting in this capacity, members of the Order's governing body determine by majority vote how many elected trustees may serve on the Hospital's board of trustees (hereinafter, the Hospital Board) and elect individuals to fill any Hospital Board trustee positions they create. Second, the members of the Order's governing body serve ex officio on the Hospital Board.¹ Third, at least a majority of all voting trustees on the Hospital Board must be members of the Order.

The Order and the Hospital are listed in The Official Catholic Directory (P.J. Kenedy & Sons, 1990) (hereinafter, the Directory). Accordingly, the group tax exemption letter issued to the United States Catholic Conference by the Internal Revenue Service (hereinafter, IRS) pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code) appears to include the Order and the Hospital.

The Hospital has employees and has established benefit arrangements for its eligible employees. The Hospital's benefit arrangements include a defined benefit pension plan (hereinafter, the Retirement Plan) and certain other welfare plans: medical, hospital, vision, and dental care plans; a life insurance plan; and a long term disability plan (hereinafter, collectively, the Welfare Plans). You represent that the Retirement Plan has not made an election under section 410(d) of the Code to be covered by Title II of ERISA.²

The Hospital's Employee Benefits Committee (hereinafter, the Committee) administers the Retirement Plan and the Welfare Plans. The Committee is subordinate to the Hospital because the Hospital Board controls appointments to the Committee. Further, there is at least one member of the Order on the Committee. You indicate that the Committee's sole function is administration of the Retirement Plan and the Welfare Plans.

To further document your request, you submitted a private letter ruling that IRS issued to the Retirement Plan and the Welfare Plans on November 23, 1992. The private letter ruling concludes that the Retirement Plan and the Welfare Plans are church plans within the meaning of Code section 414(e).

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 that 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 plan established and maintained (to the extent required in clause (ii) of sub-paragraph (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 is an integral part of the Church by virtue of the health care ministries it performs. Furthermore, the Order is exempt from tax pursuant to 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 because the Order clearly shares common religious bonds and convictions with the Church.

The Church through the Order retains control over the Hospital for all the following reasons: the members of the Order's governing body serve as the Hospital's corporate membership; the members of the Order's governing body, acting as the Hospital's corporate membership, determine whether additional trustees may serve on the Hospital Board and elect any trustees not serving ex officio on the Hospital Board; and a majority of voting trustees on the Hospital Board must be members of the Order.

In addition, the following factors assure the Hospital's adherence to the tenets and teachings of the Church and thus evidence that the Hospital shares common religious bonds and convictions with the Church: that members of the Order serve as the Hospital's corporate members; that members of the Order serve as trustees on the Hospital Board; and that the Hospital is listed in the Directory. Consequently, the Hospital is "associated with" the Church within the meaning of section 3(33)(C)(iv). Also, pursuant to its listing in the Directory and the corresponding group exemption that IRS granted to the Church, the Hospital is exempt from tax within the meaning of 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 are employees of an organization that is a civil law corporation and that 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); and the Church, as employer, is deemed to have established and to maintain the Retirement Plan and the Welfare Plans that are the subject of this opinion.

In addition to the above reason for concluding that the Retirement Plan and the Welfare Plans meet the church plan definition in section 3(33), the Retirement Plan and the Welfare Plans may be considered church plans because they are administered by the Committee, whose principal purpose or function appears to be their administration. It appears that the Committee is controlled by the Church through the Order because the Hospital Board appoints the Committee; because the Hospital Board is controlled by the Hospital's corporate membership, which comprises the members of the Order's governing body; and because at least one member of the Order serves on the Committee. In addition, the Church's control of the Committee through the Order, as described above, and the presence of at least one member of the Order on the Committee assure the Committee's adherence to the tenets and teachings of the Church and thus evidence that the Committee shares common religious bonds and convictions with the Church. Consequently, the Committee is "associated with" the Church within the meaning of section 3(33)(C)(iv). Because the Committee's principal purpose or function is administration of plans for the provision of employee retirement and welfare benefits and because the Committee is both controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA, the Committee's administration of the Retirement Plan and the Welfare Plans, by operation of section 3(33)(C)(i) of Title I of ERISA, also assures that the Church is deemed to maintain the Retirement Plan and the Welfare Plans.

For the above reasons and based on your representations, it is the opinion of the Department that the Retirement Plan and the Welfare Plans for individuals whose employment is with the Hospital constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(iii) and sections 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 the Welfare Plans are not required to comply with the provisions of Title I of ERISA as administered by the Department.

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. We note, specifically, that it may be advisable to seek the views of IRS concerning requirements applicable to health benefit arrangements among the Welfare Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ The president of the Hospital and the president of the Hospital's medical staff also serve ex officio as trustees on the Hospital Board.

² Section 4(b)(2) of ERISA excludes from Title I coverage church plans as defined in section 3(33) of Title I of ERISA, excepting only those plans that have made the Code section 410(d) election.