



March 17, 1994

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

94-09A
ERISA SECTION
3(33), 4(b)(2)

Dear Mr. Hunter:

This is in reply to your correspondence on behalf of St. Peter's Hospital (hereinafter, the Hospital), an institution of the Religious Sisters of Mercy (hereinafter, the Order), concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you question whether benefit arrangements for employees of the Hospital and of other related institutions of the Order are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence contains the following facts and representations. The Order is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (hereinafter, the Church). It is governed by a major superior who is a member of the Order.

The Order has eight geographic divisions or provinces. One of its provinces is the Religious Province of Mercy, Albany (hereinafter, the Albany Congregation). You represent that, although subordinate to the Order, the Albany Congregation is itself a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Church. Further, the Albany Congregation is governed by a major superior who is a member of the Albany Congregation and the Order.

One of the main charitable purposes of the Order and the Albany Congregation is service to the poor and sick. Specifically, the Order establishes hospitals and health care institutions.

To further its health ministry, the Order and its eight provinces jointly formed the Eastern Mercy Health System (hereinafter, EMHS).¹ EMHS is a Pennsylvania nonprofit, membership corporation. You describe EMHS as subordinate to the Order and to the Albany Congregation because the major superior of the Order, the major superior of the Albany Congregation, and the major superiors of seven other provinces of the Order are its corporate members.

EMHS supervises other corporations that were formed by the Order to provide health care. Specifically, EMHS coordinates their capital development, purchasing, auditing and legal fees, and other activities.

One corporation that EMHS supervises is MercyCare Corporation (hereinafter, MercyCare). MercyCare is a New York nonprofit, membership corporation. It is subordinate to EMHS, to the Albany Congregation, and to the Order. First, MercyCare is subordinate to EMHS in two ways: EMHS is the sole corporate member of MercyCare, and EMHS appoints and may remove the members of MercyCare's board of directors (hereinafter, the MercyCare Board). Second, it is subordinate to the Albany Congregation because a majority of directors on the MercyCare Board must be members of the Albany Congregation. Finally, MercyCare is subordinate to the Order because the Order must ratify appointment and removal of the MercyCare Board's directors.

MercyCare supervises five nonprofit, membership corporations (hereinafter, collectively, the Corporations). They are: the Hospital; St. Peter's Hospital Foundation a/k/a Foundation for St. Peter's Hospital (hereinafter, the Foundation); St. Peter's Addiction Recovery Center, Inc. (hereinafter, SPARC); Mercy Care for Kids, Inc. (hereinafter, MCK); and Our Lady of Mercy Life Center (hereinafter, the Nursing Home).²

The Corporations are subordinate to the Albany Congregation and to MercyCare. The Corporations are subordinate to the Albany Congregation because the board of trustees for each of the Corporations (hereinafter, collectively, the Corporation Boards) must have a majority of trustees who are members of the Albany Congregation. The Corporations are subordinate to MercyCare in the following ways: MercyCare is the sole corporate member of each of the Corporations and, for each of the Corporation Boards, MercyCare determines the number of trustees, appoints all trustees, and may remove all trustees, with or without cause.

The Order, the Albany Congregation, MercyCare, the Hospital, and the Nursing Home are listed in The Official Catholic Directory (P.J. Kenedy & Sons) (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 Nursing Home, the Hospital, MercyCare, the Albany Congregation, and the Order. You also represent that, in separate letters pursuant to Code section 501(c)(3), IRS accorded exemptions from tax to the Foundation, to SPARC, and to MCK, and, as noted in ERISA Opinion 91-14A, in a separate letter pursuant to Code section 501(c)(3), IRS accorded exemption from tax to EMHS.

MercyCare and each of the Corporations have employees. However, you represent that the Hospital, assisted by MercyCare and EMHS, provides employee benefits for eligible employees of MercyCare and eligible employees of the Corporations.

The employee benefits include pension benefit plans and welfare benefit plans. In 1961, the Hospital established the Employees' Retirement Plan of St. Peter's Hospital of the City of Albany (hereinafter, the Retirement Plan). It is a defined benefit plan³ In addition, the Hospital has the following welfare benefit arrangements (hereinafter, collectively, the Welfare Plans): a group life insurance plan; a long term disability plan; a medical benefits plan (hereinafter, the Medical Plan); and a travel accident, death, and dismemberment plan.⁴

The Hospital's board of trustees (hereinafter, the Hospital Board) established and controls a benefits committee (hereinafter, the Committee) to administer the Retirement Plan (hereinafter, the Committee) to administer the Retirement Plan and the Welfare Plans. You represent that the Committee's sole purpose is administration of retirement and welfare benefits.⁵ You further represent that at least three individuals must serve on the Committee and that a majority of them must be members of the Albany Congregation. You state that the Committee currently includes four members of the Albany Congregation and three lay persons.

To further document your request, you submitted a private letter ruling that IRS issued to the Retirement Plan and the Welfare Plans on April 2, 1992.⁶ The private letter ruling concludes that the Retirement Plan and the Welfare Plans are church plans within the meaning of Code section 414(e).⁷

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 and the Albany Congregation are integral parts of the Church by virtue of the health care ministries they perform. Further, the Order and the Albany Congregation are exempt from tax pursuant to 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 because they clearly share common religious bonds and convictions with the Church.

The Church through the Order and the Albany Congregation controls EMHS, Mercycare, and the Corporations. First, the Church through the Order controls EMHS, a civil law corporation, because the Order's major superior, the Albany Congregation's major superior, and the major superiors of the other provinces of the Order serve ex officio as the permanent corporate members of EMHS. Second, the Church through the Order, the Albany Congregation, and EMHS controls Mercycare, a civil law corporation, in all the following ways: EMHS is the sole corporate member of Mercycare; EMHS appoints and may remove the members of the Mercycare Board; a majority of directors on the Mercycare Board must be members of the Albany Congregation; and the Order must ratify the appointment and removal of the Mercycare Board's directors. Finally, the Church through the Order, the Albany Congregation, EMHS, and Mercycare controls the Corporations, which are five civil law corporations, because a majority of the trustees on each of the Corporation Boards must be members of the Albany Congregation and because Mercycare, which is subject to control by both EMHS and the Albany Congregation, controls each of the Corporation Boards in all the following ways: it determines the number of trustees on the Corporation Board, appoints all trustees to the Corporation Board, and may remove all trustees from the Corporation Board, with or without cause.

In addition, EMHS, Mercycare, and the Corporations are "associated with" the Church within the meaning of section 3(33)(C)(iv) because of factors that assure they adhere to the tenets and teachings of the Church and thus evidence that they share common religious bonds and convictions with the Church.

Those factors include Church control of EMHS, of MercyCare, and of the Corporations through the Order and the Albany Congregation as discussed above; Directory listings applicable to MercyCare, to the Hospital, and to the Nursing Home; and participation by members of the Order in EMHS, MercyCare, and the Corporations in all the following ways: the major superior of the Order, the major superior of the Albany Congregation, and the major superiors of seven other provinces of the Order are the corporate members of EMHS; a majority of directors on the MercyCare Board must be members of the Albany Congregation; and each of the Corporation Boards must have a majority of trustees who are members of the Albany Congregation. Also because of the applicable Directory listings and the corresponding group exemption IRS granted to the Church, MercyCare, the Hospital, and the Nursing Home are exempt from tax within the meaning of section 501(c)(3) of the Code. Finally, because of exemptions they separately obtained from IRS, EMHS, the Foundation, SPARC, and MCK are exempt from tax within the meaning of section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with MercyCare or with one of the Corporations are employees of organizations that are civil law corporations and that 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); 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 the Committee administers them. First, it appears that the Committee's principal purpose or function is administration of the Retirement Plan and the Welfare Plans. It also appears that the Committee is controlled by the Church through the Order because the Hospital Board, which is one of the Corporation Boards that, in turn, is controlled by MercyCare, EMHS, and the Albany Congregation as discussed above, appoints the Committee's members and because a majority of members of the Albany Congregation serve on the Committee. In addition, the presence of a majority of members of the Albany Congregation on the Committee assures the Committee's adherence to the tenets and teachings of the Church and thus evidences 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, which are plans for individuals whose employment is with Mercycare or with one of the Corporations, constitute one or more 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 the Medical Plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE
Director of Regulations and
Interpretations

¹ We note that ERISA Opinion 91-14A concluded that employee benefit plans of EMHS for its employees and for employees of subordinate institutions were church plans within the meaning of section 3(33) of ERISA. We also note that, although EMHS was the sole corporate member of entities whose benefit plans were described in ERISA Opinions 90-12A, 91-22A, 93-07A, and 94-05A, EMHS benefit plans were not the subject of those advisory opinions.

² You represent that the Nursing Home began operating in 1993.

³ You represent that the Retirement Plan operates under three trust agreements. First, by agreement with EMHS, the Hospital participates in a master trust agreement established by EMHS with a bank as trustee. Second, the Hospital maintains two trust agreements, each with a separate commercial trust company.

⁴ You indicate that EMHS is the policyholder for the group life insurance plan and for the long term disability plan. However, you represent that the Hospital controls eligibility criteria for its own employees and the level of contributions required of its own employees, if any. You further represent that policyholders and contract holders for the remaining Welfare Plans vary: policies or contracts may be issued to the Hospital, to Mercycare, or to both the Hospital and Mercycare.

⁵ The Committee also administers a flexible benefit arrangement that is not the subject of this advisory opinion.

⁶ The Nursing Home was not among the employers included by IRS in the private letter ruling you submitted. However, the Nursing Home is subordinate to MercyCare, EMHS, and the Albany Congregation in the same manner as the four remaining Corporations named by IRS in its letter.

⁷ We note that the IRS private letter ruling you submitted does not apply to the Hospital's flexible benefit arrangement for its own employees. We also note that, in order to become eligible for the Hospital's flexible benefit arrangement, Hospital employees sign an "unbenefited employment" enrollment form. By signing the enrollment form, an employee agrees to forgo eligibility for certain fringe benefits in return for a pay differential. It appears that a Hospital employee who enrolls in the flexible benefit arrangement forgoes certain benefits offered by the Welfare Plans, namely, medical benefits, group life insurance, and disability benefits, but continues to participate in the Retirement Plan and in other benefit arrangements and payroll practices of the Hospital that have not been made the subject of this advisory opinion, including a tax sheltered annuity program. Because it provides no additional welfare benefits of any kind, the Hospital's flexible benefit arrangement is not included in the opinions expressed in this letter.