

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington DC 20210



April 20, 1994

Mr. I. Lee Falk  
Morgan, Lewis & Bockius  
2000 One Logan Square  
Philadelphia, Pennsylvania  
19103-6993

**94-15A**  
ERISA SECTION  
3(33),4(b)(2)

Dear Mr. Falk:

This is in reply to your correspondence on behalf of Presbyterian Homes of the Presbytery of Huntingdon (hereinafter, the Corporation) in Hollidaysburg, Pennsylvania, an institution of the Presbyterian Church (U.S.A) (hereinafter, the Church). Specifically, you ask whether certain benefit arrangements for employees of the Corporation are church plans within the meaning of section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying documents contain the following facts and representations concerning the Church's organization, the Corporation's subordination to the Church, and the Corporation's benefit arrangements for its employees.

You represent that the Church is composed of sixteen synods.<sup>1</sup> One of the synods, the Synod of the Trinity (hereinafter, the Synod) is located in Pennsylvania and West Virginia. The Synod is composed of a number of Church presbyteries, which consist of the lay and clerical representatives of local Church congregations. One presbytery within the Synod is the Presbytery of Huntingdon (hereinafter, the Presbytery). The Presbytery consists of representatives of Church congregations in six counties in west central Pennsylvania.

You further represent that the Presbytery had the Corporation chartered in 1924 and that the Corporation continues to operate as a Pennsylvania nonprofit institution. You indicate that the Corporation serves the Church's ministries by providing living accommodations, support, nursing, and long term care for older adults. Specifically, the Corporation now operates three retirement homes in Pennsylvania: the United Presbyterian Home in Hollidaysburg, the United Presbyterian Home in Philipsburg, and the Woodland Retirement Center in Orbisonia. The Corporation's homes in Hollidaysburg and Philipsburg are listed in the Directory of Presbyterian Homes in the United States, Sixth Edition, 1988 (hereinafter, the Directory). You also indicate that, because the Corporation acquired it in 1991, the Woodland Retirement Center is not yet listed in the Directory, and that a fourth, as yet unnamed, home for the aged that the Corporation has under development is also not yet listed in the Directory.

You also represent that the Corporation is subordinate to the Presbytery in several ways. The Corporation's operations are dictated by the Presbytery's manual.<sup>2</sup> Also, the Corporation operates under its own bylaws, which must be approved by the Presbytery, and which the Presbytery may amend. Further, the Presbytery elects by majority vote and may remove all directors on the Corporation's board of directors (hereinafter, the Board).<sup>3</sup> In addition, one-fifth of the Board's directors must be Church ministers.<sup>4</sup> Finally, the Corporation is subordinate to the Presbytery because it must provide the Presbytery with a detailed financial accounting of its operations at least annually.

You represent that the Corporation has always operated as a nonprofit institution; however, you document that it has been accorded tax exempt status for approximately the last 50 years. Specifically, the Corporation obtained a letter from the Internal Revenue Service (hereinafter, IRS) in 1942 stating that it is an organization exempt from tax pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code).

The Corporation employs individuals in connection with its nursing home operations. Further, the Corporation has established and maintains welfare benefit arrangements for its eligible employees (hereinafter, collectively, the Welfare Plans). The Corporation has a health care plan, an insured accidental death and dismemberment plan, a supplemental life insurance plan, a legal services plan, an insured short term disability plan, an insured long term disability plan, and an insured plan providing benefits in the event of cancer.<sup>5</sup>

You represent that the Welfare Plans are administered by an Employee Benefits Committee (hereinafter, the Committee) and that the principal purpose or function of the Committee is to administer the Welfare Plans. The president of the Board appoints five directors from the Board to serve as the members of the Committee.<sup>6</sup>

You submitted an IRS private letter ruling issued to the Corporation on May 21, 1993, stating that the Corporation's health plan, its insured accidental death and dismemberment plan, and its supplemental life insurance plan are church plans within the meaning of section 414(e) of the Code. Although the remaining Welfare Plans were not included in the IRS private letter ruling, you represent that the administrative arrangements for those Welfare Plans are identical to the administrative arrangements for those among the Welfare Plans that were the subjects of the IRS private letter ruling issued to the Corporation.

Your request for an advisory opinion regarding "church plan" status involves application 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:

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, for purposes of your request for an advisory opinion concerning the Corporation, either the Synod or the Presbytery, or both, constitute one or more "churches" or "conventions or associations of churches" within the meaning of section 3(33). It also appears that the Presbytery controls the Corporation, a civil law corporation, in all of the following ways: the Presbytery's manual specifies how the Corporation may operate; the Presbytery must approve and may amend the Corporation's bylaws; the Presbytery elects all directors to the Board; and the Corporation must submit detailed, annual reports of its financial condition to the Presbytery. Also, the Corporation is exempt from tax pursuant to section 501(c)(3) of the Code.

Furthermore, because they assure that the Corporation adheres to the tenets and teachings of the Church, the Presbytery's control of the Corporation (as described above) and the presence of three Church ministers on the Board evidence that the Corporation shares common religious bonds and convictions with the Church. Consequently, the Corporation is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with the Corporation are considered employees of an organization that is a civil law corporation and that 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 Church is therefore deemed the employer of those individuals for purposes of the church plan definition in section 3(33).

In accordance with the church plan definition in section 3(33), the Church is also deemed to maintain the Welfare Plans through the Committee, whose exclusive purpose is administration of welfare benefits for employees of a church and which is controlled by and "associated with" the Church, thus meeting the requirement of section 3(33)(C)(i). The Church controls the Committee because the Board's president, who is elected to the Board by the Presbytery, appoints the members of the Committee. Because it assures that the Committee adheres to the tenets and teachings of the Church, the Presbytery's control of the Committee (as described above) also will evidence that the Committee shares common religious bonds and convictions with the Church. Consequently, that the Committee is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

For the above reasons and based on your representations, it is the view of the Department that the Welfare Plans constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(i) and 3(33)(C)(iii) 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 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. We note specifically that the status of the Corporation's health benefit arrangements pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> It appears that Church synods, as well as Church presbyteries (discussed below), are hierarchical and geographical divisions of the Church.

<sup>2</sup> Sections M-10.010 through M-10.0107 of the manual concern the Corporation.

<sup>3</sup> Directors on the Board of the Corporation also serve, for concurrent terms, on the board of directors of Presbyterian Services, Inc., a related but separate corporation that you have not made the subject of your request for an advisory opinion.

<sup>4</sup> Specifically, one among the five directors in each of the Board's three "classes" of directors must be a Church minister from a local Church congregation within the Presbytery.

<sup>5</sup> We note that your representations do not include information sufficient to conclude whether certain group insurance programs for the Corporation's employees may be "group or group-type insurance" programs excluded from ERISA Title I coverage by regulations of the Department of Labor at 29 CFR §2510.3-1(j). We also note that the Corporation offers its employees a premium conversion arrangement in connection with several of the Welfare Plans. However, it appears that the Corporation may offer the premium conversion plan primarily so that its employees may gain certain tax advantages and that the premium conversion arrangement itself provides no ERISA-covered welfare benefits in addition to those you describe as offered by the Welfare Plans. Accordingly, the opinions expressed in this letter do not apply to the premium conversion plan, nor would they apply to any of the benefit arrangements you identify as Welfare Plans if, by regulation or otherwise, such plans are excluded from the definition of an "employee welfare benefit plan" in section 3(1) of Title I of ERISA.

<sup>6</sup> The Corporation's executive director, who is a Church minister, consults with the Board president concerning Committee appointments.