



November 3, 1994

Mr. Neal A. Mancoff  
Schiff Hardin & Waite  
7200 Sears Tower  
Chicago, Illinois 60606-6473

**94-34A**  
ERISA SECTION  
4(b)(2),3(33)

Dear Mr. Mancoff:

This is in reply to your correspondence on behalf of St. Francis College of Fort Wayne, Inc. (hereinafter, the College), which is a college of the Sisters of St. Francis of Perpetual Adoration (hereinafter, the Order). You request an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the College's benefit arrangements for its employees. Specifically, you request an opinion concluding that the College's employee benefit plans are church plans within the meaning of section 3(33) of Title I of ERISA and are thus excluded from ERISA Title I requirements by section 4(b)(2) of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is organized within the Roman Catholic Church (hereinafter, the Church) as a religious congregation of women. To facilitate administration of the Order in the United States, the Order has been divided into two provinces based on its members' geographic locations. All members of each province are also members of the Order.

Your request concerns the Immaculate Heart of Mary Province, which is the Order's Eastern Province in the United States (hereinafter, the Province).<sup>1</sup> Within its geographic boundaries, the Province is primarily governed by a provincial council (hereinafter, the Council). The Council consists of seven members of the Province who are elected by the Province's other members; among the Province's governing members are its members with the titles provincial, assistant provincial, and provincial treasurer, respectively.

Concurrently, the Province is organized as an Indiana nonprofit corporation. In the Province's corporate form, permanent members of the Province (i.e., those members of the Province who are under perpetual vows) serve as its sole corporate members, and the Council's members serve as the members of its board of directors.

You represent that the Province shares the Order's religious and educational ministries within the Church, which include the operation of educational facilities. To further that mission within the Church, the College was established as a separate Indiana nonprofit membership corporation in 1940.<sup>2</sup>

You indicate that the College is controlled by the Church through the Order generally and, specifically, through the Province. On behalf of the Church and the Order, the Province controls both the College's corporate membership and its board of trustees (hereinafter, the Board). The College's corporate membership includes all the trustees serving on the College's Board and all sisters of the Province who are under perpetual vows and who are citizens of the United States. The College's Board consists of eighteen trustees. Twelve of the College's trustees are elected by those corporate members of the College who are also corporate members of the Province and who fill academic or administrative positions at the College or who serve on the Province's Council; and three of the trustees whom they elect must be members of the Province. The remaining six trustees are individuals who serve on the College's Board *ex officio*: they are the College president, College treasurer, and the secretary of the College as well as certain governing members of the Province (i.e., the provincial, the assistant provincial and the provincial treasurer). You further represent that a total of nine members of the Province serve as trustees on the Board: apparently, they include the three governing members of the Province, who, as noted above, are also Province members; the College president, whose office is currently filled by a member of the Province; and five other members of the Province who are trustees on the College's Board.

The Order, the Province, and the College are listed in *The Official Catholic Directory* (P.J. Kenedy & Sons, 1990) (hereinafter, the Directory). Accordingly, the Order, the Province that sponsors the College, and the College share in a 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).

The College employs individuals to carry out its educational functions and maintains employee benefit arrangements for its eligible employees. The College's benefit arrangements include a life insurance plan, an accidental death and disability plan, a comprehensive medical plan, a dental and vision plan, and a program providing tax sheltered annuities pursuant to Code section 403(b) (hereinafter, collectively, the Plans). The Plans are operated under the direction of a pension and welfare benefits committee of the College (hereinafter, the Committee) whose primary purpose is administration of the Plans. The College president, the College treasurer, and the College vice president for finance serve *ex officio* as the members of the Committee. The College president, as noted above, is a member of the Province, as is the College treasurer. In addition, you submitted a private letter ruling that IRS issued to the College on October 14, 1993, concluding that the Plans of the College for its employees constitute church plans within the meaning of section 414(e) of the Code.

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:

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 or churches ....

It appears that the Order, including its Province, constitutes an integral part of the Church by virtue of its health care ministries. Furthermore, it is clearly controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA and is exempt from tax pursuant to section 501(c)(3) of the Code.

The Church through the Order, and, specifically through the Province, controls the College, which is a civil law corporation, in all the following ways: virtually all the corporate members of the College are members of the Province; a majority of the trustees on the Board of the College are elected by that portion of the College's corporate membership who are also corporate members of the Province, including the members of the Province's Council, who are the governing members of the Province; three of the twelve elected trustees on the Board must be members of the Province; and three Province officials serve ex officio as trustees on the College's Board.

In addition, the College is "associated with" the Church, within the meaning of section 3(33)(C)(iv), because of factors that assure the College's adherence to the tenets and teachings of the Church and thus evidence that it shares common religious bonds and convictions with the Church. Those factors include the Church's control of the College through the Province; Province members' participation in the College's corporate membership and in the Board of the College; and the College's Directory listing. Also, because of the College's Directory listing and the corresponding group exemption that IRS granted to the Church, it 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 College 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 ERISA section 3(33); and the Church, as employer, is deemed to have established and to maintain the Plans that are the subject of this opinion.

In addition to the above reason for concluding that the Plans meet the church plan definition in section 3(33), the Plans may be considered one or more church plans by operation of section 3(33)(C)(i) of Title I of ERISA because the Plans' administration by the Committee, whose principal purpose is the Plans' administration, further assures that the Church is deemed to maintain the Plans. It appears that the Committee is controlled by the Church through the Order and, specifically, through the Province, because a majority of the Committee's members are members of the Province. Furthermore, both the Church's control of the Committee and Province members' participation in the Committee assure that the Committee adheres 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) of Title I of ERISA.

For the above reasons and based on your representations, it is the opinion of the Department that the Plans constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of section 3(33)(C)(iii). In addition, ERISA section 3(33)(C)(i) appears to describe the Plan. 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 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 employee health benefit arrangements of the College pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup>The Province also uses the title "Province of the Immaculate Heart of Mary" and in its corporate form (described below) is known as the Sisters of St. Francis of Perpetual Adoration, Inc. Properties owned by the Province appear to be primarily located in Indiana, Ohio, Illinois, Kentucky, and Tennessee.

<sup>2</sup> Originally, the College was named Saint Francis College of Lafayette, Indiana. From 1944 until 1975, the College was named Saint Francis College. In 1975, the College began to be known by its current name.