

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



March 6, 1995

95-02A
ERISA SECTION 3(33), 4(b)(2)

Ms. Melissa B. Rasman
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania 19103-2793

Dear Ms. Rasman:

This is in reply to your correspondence on behalf of Jeanes Hospital (hereinafter, the Hospital), which is a medical care institution of the Religious Society of Friends (hereinafter, the Society). Your inquiry concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Hospital's employee benefit arrangements. Specifically, you ask whether those benefit arrangements are church plans within the meaning of section 3(33) of Title I of ERISA and thus excluded from ERISA Title I coverage by ERISA section 4(b)(2).

Your correspondence and the accompanying documents describe the structure and organization of the Society in the area of Philadelphia, Pennsylvania; the Society's control of the Hospital and related institutions of the Jeanes Health System (hereinafter, the System); and the Hospital's benefit arrangements that are the subject of your request for an opinion.

You describe the Society as conducting religious services for its members predominately through periodic meetings in which members gather primarily for worship. Typically, a gathering of members who live within a relatively small geographic area (i.e., a neighborhood) forms a monthly meeting. An individual's membership in the Society resides in the monthly meeting, and participation in that meeting also confers membership in two larger meetings: a quarterly meeting and a yearly meeting. The quarterly meeting consists of the membership of two or more monthly meetings that are geographically proximate; the yearly meeting consists of the membership of constituent quarterly and monthly meetings and generally includes members who live within a relatively large geographical area of the United States. In addition, yearly, quarterly, and monthly meetings are further connected because each monthly meeting appoints individuals to represent it in the appropriate quarterly meeting and in the yearly meeting for the geographical area in which it is located.

In the Philadelphia area, the yearly meeting is known as the Philadelphia Yearly Meeting of the Religious Society of Friends (hereinafter, the Yearly Meeting). It appears that the Yearly Meeting is not subordinate to any other meeting of the Society, either national or international.

The Yearly Meeting carries out its religious and charitable work partly through its committees. The type of committee you describe is a "home committee." A "home committee" consists of members of the Yearly Meeting who oversee the Yearly Meeting's boarding homes, nursing homes, homes for care of the infirm, and other similar institutions. In the Philadelphia area, there are several "home committees" (hereinafter, collectively, the Home Committees), and each "home committee" is appointed by a constituent quarterly meeting of the Yearly Meeting.

Among the institutions that the Home Committees supervise are the System's four nonprofit institutions. They include the Anna T. Jeanes Foundation (hereinafter, the Foundation) in Jenkintown, Pennsylvania, and three other

nonprofit corporations: the Hospital; Jeanes Community Health Service in Philadelphia, Pennsylvania; and Jeanes System Management in Jenkintown, Pennsylvania (hereinafter, collectively, the Corporations).¹

The Foundation's function is to control the Corporations on behalf of the Home Committees, and each of the Corporations provides, or facilitates the provision of, medical care. The Hospital has always been operated as a medical facility and is listed as one of the Yearly Meeting's religious and charitable works in the 1992-93 Directory of the Yearly Meeting (hereinafter, the Directory); Jeanes Community Health Service provides elderly day care, physical therapy, elderly transportation services, and an emergency response program; and Jeanes Systems Management employs management and other personnel to serve the System's other institutions.

The Foundation is organized as a membership corporation under the control of the Home Committees, and the Foundation, in turn, controls the Corporations. Specifically, the Foundation's entire corporate membership and its board of directors, although interdependent, are ultimately under the control of the Home Committees. Each of the Home Committees nominates an equal number of members of the Yearly Meeting to serve as the Foundation's corporate members. Subsequently, the members of the Foundation's board of directors (hereinafter, the Foundation Board) elect all corporate members of the Foundation from among the Home Committees' nominees. According to your representations, the directors on the Foundation Board are themselves elected by the Foundation's corporate members. Those directors also elect from among themselves an executive committee.² The members of the Foundation's executive committee serve as the sole corporate members of each of the Corporations and elect a board of directors for each of the Corporations.³

You represent that the Foundation and the Corporations have obtained exemptions from tax pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code). However, you describe the fifth corporation in the System, which is J.H. Management Company (hereinafter, JHM) in Philadelphia, Pennsylvania, as a for-profit corporation. You indicate that JHM was incorporated to perform any for-profit activities in which the System engages.

You further indicate that, although JHM currently has no employees, the Foundation and the Corporations employ individuals to carry out their functions. Further, the Hospital has established and maintains six employee benefit arrangements (hereinafter, collectively, the Plans) primarily for its eligible employees. The benefit arrangements you

¹ The oldest corporation in the System is the Hospital. It was established in 1907 through a charitable bequest from a member of the Friends. Prior to 1982, the Hospital was the only nonprofit corporation in the System. In a 1982 reorganization of the System, three additional nonprofit corporations were created to accept transfer of some part of the Hospital's assets and liabilities: the Foundation, Jeanes System Management, and Friends Hall at Fox Chase. Friends Hall at Fox Chase was a nonprofit corporation that operated a skilled nursing care facility that was closed in 1988 when it also ceased to be a member of the System. Jeanes Community Health Service was not added to the System until 1983. The only other institution within the System is J.H. Management Company, a for-profit corporation that is described below.

² The Foundation's executive committee consists of the chairperson of the Foundation's board of directors and four to seven other directors.

³ You also state that Jeanes Management Company's bylaws providing for appointment of its corporate members by the Foundation's board of directors are superseded by a provision of Foundation's bylaws that effectively appoints the Foundation's executive board as the corporate membership of any institution whenever the Foundation's board of directors has the power to appoint a corporate membership.

describe include the Jeanes Hospital Retirement Income Plan (hereinafter, the Pension Plan); the Jeanes Health System Pension Plus Plan operated pursuant to section 403(b) of the Code; a medical plan; a dental plan; and a disability insurance program. The Foundation, Jeanes System Management, and Jeanes Community Health Services have adopted the Plans for their eligible employees; and, although JHM has adopted the Pension Plan, no employees of JHM have ever participated in the Pension Plan.⁴

You represent that the Plans are administered by a pension and benefits committee (hereinafter, the Benefits Committee) that was established April 23, 1993, by resolutions of the Foundation Board and of the Hospital's board of directors. The Benefits Committee is composed of three to seven members of the Hospital's board of directors who serve at the discretion of that board. Further, a majority of the members of the Benefits Committee must be members of the Yearly Meeting, and the principal purpose of the Benefits Committee appears to be administration of the Plans.

You also submitted a private letter ruling that IRS issued to the Plans on July 2, 1992, which conditioned the Plans' status as church plans within the meaning of section 414(e) of the Code on establishment of an appropriate committee to administer the Plans. As noted above, the Plans appear to have complied with this condition.

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), 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.

(B) The term "church plan" does not include a plan--

- (i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1986), or
- (ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(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 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.

⁴ There are at least 250, but less than 1000, employees participating in each of the Plans, and 90 percent or more of the participants in each of the Plans are employees of the Hospital. The remaining 10 percent or less of participants in each of the Plans are employees of the Foundation, Jeanes System Management, or Jeanes Community Health Services.

(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 Yearly Meeting constitutes a "church" or a "convention or association of churches" within the meaning of ERISA section 3(33). It also appears that quarterly meetings of the Society, which are integral parts of the Yearly Meeting, select members of the Yearly Meeting to constitute the Home Committees. Further, the Home Committees control the Foundation on behalf of the Yearly Meeting because each of the Home Committees nominates members of the Yearly Meeting to serve as the sole corporate members of the Foundation. Also the Home Committees through the Foundation control the Corporations in that the corporate members of the Foundation, who are nominated by the Home Committees, elect the directors on the Foundation Board, and several Foundation Board directors whom the Foundation Board elects as its executive committee serve as the sole corporate members of each of the Corporations and elect all directors on each Corporation's board of directors. The Foundation and the Corporations are also exempt from tax pursuant to section 501(c)(3) of the Code.

Further, because the Yearly Meeting's control of the Foundation and of the Corporations (as described above) assures that they adhere to the Yearly Meeting's tenets and teachings, it evidences that the Foundation and the Corporations share common religious bonds and convictions with the Yearly Meeting. In addition, the Hospital's Directory listing evidences its adherence to the tenets and teachings of the Yearly Meeting and, thus, further assures that Hospital shares common religious bonds and convictions with the Yearly Meeting. Consequently, the Foundation and the Corporations are "associated with" the Yearly Meeting 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 Foundation and the Corporations are employees of organizations that are civil law corporations and that are 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 Yearly Meeting would be deemed the employer of these individuals for purposes of the church plan definition in section 3(33).

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 church plans because they are administered by the Benefits Committee, which is controlled by the Yearly Meeting through the Home Committees, the Foundation, and the Hospital and has as its principal purpose or function the Plans' administration. The Benefit Committee is controlled by the Yearly Meeting through the Home Committees, the Foundation, and the Hospital because the Benefit Committee's members consist of several of the Hospital directors who serve on that Committee at the discretion of the Hospital's board of directors and whose appointments as Hospital directors are controlled by the Yearly Meeting through Home Committees and the Foundation (as described above). In addition, the presence of members of the Yearly Meeting as members of the

Committee appears to assure the Committee's adherence to the tenets and teachings of the Yearly Meeting and thus appears to evidence that the Benefits Committee shares common religious bonds and convictions with the Yearly Meeting. Consequently, the Benefits Committee appears to be "associated with" the Yearly Meeting within the meaning of section 3(33)(C)(iv). Based on these factors, it appears that administration of the Plans by the Benefits Committee, by operation of section 3(33)(C)(i) of Title I of ERISA, also assures that the Yearly Meeting is deemed to maintain the Plans.

Finally, we have considered issues raised by adoption of the Pension Plan by JHM, which you describe as the System's only for-profit corporation and as a corporation without employees. However, inasmuch as all employees participating in the Pension Plan are deemed employees of a "church" or "convention or association of churches" based on our analysis above, we do not view sections 3(33)(B)(i) or (ii) as operating in these circumstances to exclude the Pension Plan from the "church plan" definition in ERISA section 3(33) of Title I of ERISA.

For the above reasons and based on your representations, it is the view of the Department that the Plans 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)(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 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 health benefit arrangements among the Plans pursuant to the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE
Director of Regulations and Interpretations