

**U.S. Department of Labor**

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



June 16, 1995

95-08A  
ERISA SECTION 3(33), 4(b)(2)

Ms. Anne E. Moran  
Miller & Chevalier  
655 Fifteenth Street, N.W.  
Suite 900  
Washington, D.C. 20005-5701

Dear Ms. Moran:

This is in reply to your correspondence on behalf of the Sisters of St. Francis of the 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 health benefit plans of eight institutions of the Order for their respective employees (hereinafter, the Plans). Specifically, you request an opinion concluding that the 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 as a religious congregation of women within the Roman Catholic Church (hereinafter, the Church). To facilitate the Order's administration, it has been subdivided into two provinces based on its members' geographic locations within the United States. All members of each province are also members of the Order.

Your request concerns 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. The Council is elected at a meeting called a Provincial Chapter, which consists of only permanent members of the Province (i.e., professed sisters who have made their perpetual vows), all of whom have been elected as delegates to the Provincial Chapter by all the Province's other permanent members. It also appears that a Province treasurer, who is also a member of the Order and of the Province, assists in governing the Province. The Province has also been organized as a nonprofit corporation pursuant to Indiana law. The Province's corporate form, which is known as the Sisters of St. Francis of Perpetual Adoration, Inc.,<sup>2</sup> has corporate members and a board of directors. All permanent members of the Province serve as its sole corporate members, and the Provincial Chapter, which is described above, elects from among the permanent members of the Province all directors who serve on the Province's board of directors.

You represent that the Province's religious and health ministries within the Church include operating health care facilities. To further its mission within the Church, the Province has established hospitals and other nonprofit institutions that are the subjects of your request for an advisory opinion.

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<sup>1</sup> The Province is one of two divisions of the Order in the United States. Properties owned by the Province appear to be primarily located in Indiana, Ohio, Illinois, Kentucky, and Tennessee.

<sup>2</sup> It formerly used the corporate name "Poor Sisters of St. Francis Seraph of the Perpetual Adoration, Inc."

The Province supervises most of its institutions through its nonprofit corporation known as the Sisters of St. Francis Health Services (hereinafter, Health Services). Health Services is under the control of the Province because all permanent members of the Province are its sole corporate members and because Health Services has a board of directors (hereinafter, the Health Services Board) that includes all members of the Council and the Province's treasurer, all of whom serve ex officio as directors on the Health Services Board.

You also describe the nonprofit corporation known as Alverno Administrative Services, Inc. (hereinafter, Alverno), which provides group purchasing and computer services for the Province's hospitals, among others. The Province supervises Alverno through Health Services inasmuch as the members of the Health Services Board are the sole corporate members of Alverno and inasmuch as the four to seven directors on Alverno's board of directors (hereinafter, the Alverno Board) must include at least four members of the Province.

The seven other nonprofit institutions of the Province whose benefit arrangements are the subject of your request are the Province's hospitals (hereinafter, collectively, the Hospitals). They include St. Elizabeth Hospital Medical Center in Lafayette, Indiana (hereinafter, Hospital A); St. Alexis Hospital in Cleveland, Ohio; St. Joseph Hospital in Memphis, Tennessee (hereinafter, Hospital B); St. Anthony Medical Center in Louisville, Kentucky (hereinafter, Hospital C); St. Francis Hospital of Evanston, Illinois (hereinafter, Hospital D); St. Anthony Hospital in Michigan City, Indiana (hereinafter, Hospital E); St. James Hospital and Health Centers in Chicago Heights, Illinois (hereinafter, Hospital F); and St. Francis Hospital Center in Beech Grove, Indiana (hereinafter, Hospital G).<sup>3</sup>

You represent that the Province controls the Hospitals. First, you state that, except for Hospital D, each of the Hospitals is a separate unincorporated division of Health Services. Second, you describe Hospital D as a wholly-owned subsidiary of Health Services. You further state that the directors on the Health Services Board serve as the sole corporate members of Hospital D and that Hospital D's corporate members elect 45 of the 49 directors on Hospital D's board of directors (hereinafter, the Hospital D Board). Hospital D's four remaining directors, who all serve ex officio on the Hospital D Board, are the president of Hospital D, the president of Health Services, the president of Hospital D's medical staff, and the president of Hospital D's auxiliary. Only the president of Hospital D's auxiliary serves as a non-voting director on the Hospital D Board.

The Order and its Province, Health Services, Alverno, and the Hospitals are listed in *The Official Catholic Directory* (P.J. Kenedy & Sons, 1992) (hereinafter, the *Directory*). Accordingly, the Order and its Province, Health Services, Alverno, and the Hospitals 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*).

It appears that the Hospitals and Alverno employ individuals to assist in their provision of services and that each Hospital and Alverno has established and maintains for its own eligible employees a Plan that is the subject of your request for an opinion. Hospitals C, D, and G each has a Plan that provides its own eligible employees with only health benefits; Hospitals A, B, E, and F each has a Plan that provides its own eligible employees with health and dental benefits; and, excepting employees in Alverno's group purchasing division, employees of Alverno participate in its Plan for health and dental benefits that Alverno has established and maintains for only its own employees.<sup>4</sup> You have submitted a private letter ruling that IRS issued concerning the Plans. The IRS private letter ruling concluded that the Plans constitute church plans within the meaning of section 414(e) of the *Code*.

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<sup>3</sup> Among the Province's other institutions, it also has an eighth hospital, which is St. Margaret Hospital in Hammond, Indiana.

<sup>4</sup> It appears that eligible employees of Alverno's group purchasing division participate in an employee health benefit arrangement of the Province's St. Margaret Hospital. The St. Margaret Hospital benefit arrangement covers that

You represent that an administrative committee has been established for each Plan (hereinafter, collectively, the Committees) and that the primary purpose of each Committee is administration of one of the Plans. All members of each Committee are appointed by the directors on the Health Services Board, and a majority of the membership of each Committee must consist of members of the Province.

Further, you state that certain participants in the Plans are employed in connection with "unrelated trades or businesses" of the Hospitals within the meaning of Code section 513. Specifically, you represent that two of Hospital B's 823 Plan participants, two of Hospital D's 1,385 Plan participants; and 19 of Hospital E's 520 Plan participants are so employed.<sup>5</sup>

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 . . . .

(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 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 --

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Hospital's own eligible employees and the employees of Health Services. This opinion does not address the status under ERISA Title I of St. Margaret Hospital's benefit arrangement.

<sup>5</sup> It appears, thus, that you are concerned with individuals who comprise approximately 0.2% of participants in the Plan of Hospital B; approximately 0.1% of participants in the Plan of Hospital D; and approximately 3.6% of participants in the Plan of Hospital E.

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

The Church through the Order and the Province controls Health Services, which is a civil law corporation, because all of the permanent members of the Province constitute the sole corporate members of Health Services and because the members of the Province's governing body (the Council) and the Province's treasurer, who assists that Council in governing the Province, serve ex officio as directors on the Health Service Board.

Further, the Church through the Order, the Province, and Health Services controls all the Hospitals, excepting Hospital D, for the reason that each such Hospital is an unincorporated division of Health Services, which (as described above) is controlled by the Church through the Order and the Province. In addition, the Church through the Order, the Province, and Health Services controls Hospital D and Alverno, which are civil law corporations, because the directors on the Health Services Board, whose members (as described above) include the Council and the Province's treasurer, serve as the sole corporate members of Hospital D and as corporate members of Alverno. Further, excepting four directors on the 45-member Hospital D Board, the directors on the Hospital D Board are elected by the directors on the Health Services Board, who (as described above) act as the sole corporate members of Hospital D.

Also, Health Services, Alverno, and the Hospitals are "associated with" the Church, within the meaning of section 3(33)(C)(iv), because of factors that assure their adherence 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 the Church's control through the Order and its Province of Health Services, Alverno, and the Hospitals (as described above); participation by members of the Province in the corporate membership of Health Services, Alverno, and Hospital D; participation by members of the Province in the Health Services Board and in the Alverno Board; and Directory listings applicable to Health Services, Alverno, and the Hospitals. Also, because of Directory listings for the Hospitals, Alverno, and Health Services that allow them to participate in the corresponding group exemption that was granted to the Church by IRS, exemption from tax within the meaning of section 501(c)(3) of the Code appears to extend to Health Services, to Alverno, and to each of the Hospitals.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with the Hospitals or with Alverno 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 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 church plans by operation of section 3(33)(C)(i) of Title I of ERISA because the Committees, whose principal purpose in each case is the administration of the Plan for which the Committee is responsible, administer the Plans and thus further assure that the Church is deemed to maintain the Plans. It appears that each Committee is controlled by the Church through the Order and the Province because the Health Services Board, which (as described above) is controlled by the Church through the Order and the Province, appoints the members of each Committee and because a majority of the Committee's members are members of the Province. Furthermore, both the Church's control of the Committees and the Province members' participation in each of the Committees assure that the Committees adhere to the tenets and teachings of the Church and thus evidence that the Committees share common religious bonds and convictions with the Church. Consequently, the Committees are "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

Finally, we have considered issues raised by participation in the Plans by the individuals whom you describe as employees of unrelated trades or businesses within the meaning of ERISA section 513. It appears that participation by individuals who may be employed in connection with unrelated trades or businesses in the Plans of Hospitals B, D, and E in the numbers and percentages of total Plan participants that are indicated above does not exclude those Plans from the section 3(33) "church plan" definition by operation of sections 3(33)(B)(i) or (ii) 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 Plans. 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 the Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations and Interpretations