

U.S. Department of Labor

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



June 16, 1995

95-09A
ERISA SECTION 3(33), 4(b)(2)

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

Dear Mr. Hunter:

This is in reply to your correspondence on behalf of Archmere Academy, Inc. (hereinafter, the Academy) in Claymont, Delaware. Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you describe the Academy as an institution of the Canons Regular of Premontre a/k/a the Norbertine Fathers (hereinafter, the Order), and you request an advisory opinion concerning whether benefit arrangements for employees of the Academy (hereinafter, the Plans) are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of men established according to the tenets of canon law of the Roman Catholic Church (hereinafter, the Church). The Order in the United States subdivides its members into several canonries based on their geographic locations. Daylesford Abbey in Paoli, Pennsylvania, is the seat of the Order's Daylesford Abbey Canonry (hereinafter, the Canonry). Within the Canonry, the Abbey Canonry Council (hereinafter, the Council) governs the members of the Order (hereinafter, the Norbertine Fathers). The Council is comprised of the abbot of the Canonry and six other members,¹ all of whom are Norbertine Fathers.

The Canonry is a membership corporation organized under Pennsylvania nonprofit corporation law. In its corporate form, the Canonry is known as The Norbertine Fathers of Pa., Inc. It has corporate members and a board of directors. The members of the Canonry Council serve as the members of the Canonry's board of directors, and the sole corporate members of the Canonry consist of all directors on the Canonry's board who belong to the Canonry.

The Order furthers its mission within the Church through its religious and educational activities. In fulfillment of its mission within the Church, the Order established the Academy.

The Academy is incorporated separately as a nonprofit corporation under Delaware law.² The Academy operates according to articles of incorporation and bylaws that provide for corporate members and a board of trustees (hereinafter, the Academy Board). The members of the Council serve as the sole corporate members of the Academy, and, except for the abbot of Daylesford Abbey and the headmaster of the Academy who serve ex officio as trustees on the Academy Board, they elect the trustees on the Academy Board. At least one-third of trustees on the Academy Board must be Norbertine Fathers within the Canonry.

¹ In addition to the abbot of Daylesford Canonry, the Council consists of three members of the Canonry appointed by the abbot and three members elected by the Canonry.

² Before its certificate of incorporation was amended in 1974, the Academy was named Premonstratension Fathers, Inc.

The Order, the Canonry, and the Academy are listed in The Official Catholic Directory (P.J. Kenedy & Sons, 1994) (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) includes the Order, the Canonry, and the Academy.

The Academy has employees, and it has established and maintained the Plans for its eligible employees. The Plans include a regular retirement plan and a supplemental retirement plan, both of which provide employees with tax sheltered annuities; an early retirement plan; a medical reimbursement plan; a long term disability plan; a health care plan; and a group life insurance plan. The medical reimbursement plan is part of the Academy's flexible spending plan, which you have not made the subject of your request for an opinion.

By resolution of July 7, 1994, the Academy Board established a benefits committee (hereinafter, the Committee), consisting of at least three members, whose sole function is the Plans' administration. The chairman of the Academy's Board, who (as described above) is controlled by the Order and its Canonry, appoints and may remove the members of the Committee. Further, a majority of the members of the Committee must be Norbertine Fathers.

Your submission includes a private letter ruling that IRS issued to the Plans on January 2, 1995, concluding that the Plans are church plans within the meaning of Code section 414(e).

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 of churches.

It appears that the Order and its Canonry are integral parts of the Church by virtue of the religious and educational ministries they perform. In addition, both the Order and its Canonry, which is a civil law corporation, 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 Canonry controls the Academy, which is a civil law corporation, in the following ways: the members of the Council of the Canonry serve as the Academy's sole corporate members and, as the Academy's sole corporate members, they elect virtually all trustees on the Academy Board, at least one-third of whom must be Norbertine Fathers; and the abbot of Daylesford Abbey, who is a member of the Order and the Canonry, serves ex officio as a trustee on the Academy Board.

In addition, the Academy is "associated with" the Church, within the meaning of section 3(33)(C)(iv) because of the following factors, which assure that the Academy adheres to the tenets and teachings of the Church and thus evidence that it shares common religious bonds and convictions with the Church: the Church controls the Academy through the Order and the Canonry; members of Council, who are Norbertine Fathers, participate in the Academy as its sole corporate members and as one-third of the trustees on the Academy Board; the abbot of Daylesford Abbey, who is a member of the Order and the Canonry, serves ex officio as a trustee on the Academy Board; and the Directory contains a listing applicable to the Academy. Also, because of the applicable Directory listing and the corresponding group exemption that IRS granted to the Church, the Academy 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 Academy 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 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 reasons for concluding that the Plans meet the church plan definition in section (33), they may be considered church plans by operation of section 3(33)(C)(i) of Title I of ERISA because their administration by the Committee further assures that the Church is deemed to maintain the Plans. The principal purpose or function of the Committee is administration of the Plans for the provision of employee retirement and welfare benefits. It appears that the Committee is controlled by the Church through the Order and the Canonry because the Committee's members are appointed by the chairman of the Academy's Board, who (as described above) is controlled by the Order. Further, a majority of the members of the Committee must be Norbertine Fathers. Because the Church's control of the Committee through the Order and the Canonry and the presence of Norbertine Fathers on the Committee assure that the Committee adheres to the tenets and teachings of the Church, they 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).

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 sections 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 the status of health benefit arrangements among the Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE
Director of Regulations and Interpretations