

U.S. Department of Labor

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



June 16, 1995

95-10A
ERISA SECTION 3(33), 4(b)(2)

Mr. James F. Podheiser
Stradley Ronon Stevens & Young
2600 Commerce Square
Philadelphia, Pennsylvania 19103-7098

Dear Mr. Podheiser:

This is in reply to your inquiry on behalf of St. Joseph's University in Philadelphia, Pennsylvania (hereinafter, the University), which is an institution of the Jesuit Fathers and Brothers (hereinafter, the Order). Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to certain benefit plans for the University's employees. Specifically, you request an advisory opinion concerning whether those benefit 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, which is also known as the Society of Jesus or Societas Jesu, is a religious congregation of men established according to the tenets of canon law of the Roman Catholic Church (hereinafter, the Church). The governing body of the Order in the United States is The Society of Jesus in the United States National Office, which is also known as the Jesuit Conference (hereinafter, the Conference). The president of the Conference, who is a member of the Order, supervises the Conference.

Within the United States, the Order further subdivides its members into ten provinces, based on their respective geographic location. Each province within the governance of the Conference is governed by a provincial who is a member of the Order and the province. One such province is the Maryland Province (hereinafter, the Province),¹ which includes the District of Columbia and West Virginia as well as portions of Maryland, New Jersey, North Carolina, and Pennsylvania, including the Philadelphia region.

To further the Order's mission within the Church, one of the Order's main activities is operating educational institutions. To aid in fulfilling its mission and ministry within the Church, the Order incorporated the University, which is an institution of higher education, in 1852.²

You represent that the Order organized the University as a nonprofit, membership corporation with articles of incorporation and bylaws. Those documents provide for the University's operation by its corporate members and by a board of trustees (hereinafter, the Board). There are 15 to 35 trustees on the Board, and, except that the University's president serves on the Board *ex officio*, each trustee is elected by majority vote of the other trustees. The individuals elected to serve as trustees on the Board also serve as the University's sole corporate members.

¹ The legal title of the Maryland Province is Corporation of the Roman Catholic Clergymen, Maryland.

² Originally, the University used the name "The Saint Joseph's College in the City of Philadelphia."

The University's bylaws, at Article I, section 1, state that "[it] is anticipated that approximately twelve [trustees] will be members of the Society of Jesus." There are now 27 trustees on the Board, and 10 of those trustees are members of the Order.

Also, Article VI, section 1, of the University's bylaws provides for the Board's appointment of the president of the University and other officers. The bylaws also provide for the Board to consult with representatives of the Order in the course of their selection of a University president and recite that the Board's selection process for a University president includes consultation with representatives of the Order. The bylaws further recite that it is desirable that a member of the Order be chosen for that office. The current president of the University is a member of the Order.

One of the University president's many responsibilities is, according to the bylaws at Article VI, section 7, appointment of the University's director of campus ministry, after obtaining approval from the Order's representative. The University's bylaws recite that the president's appointee "should normally" be a member of the Order; that he is responsible for promoting religious welfare of the University's community; and that in his endeavors he is to receive the personal assistance of the Order, of the University's lay faculty, and of its staff. Also, in furtherance of the University's goal of promoting education in the Order's tradition, the Board has a standing committee known as its academic affairs committee. The members of that committee review and recommend to the Board all the University's educational policies, and they are held responsible for the University's identity with the Order.

The Order, the Province, and the University are listed in The Official Catholic Directory (P.J. Kenedy & Sons, 1992) (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) appears to include the Order, the Province, and the University.

As noted above, the University has employees and has established and maintains employee benefit arrangements for its eligible employees. Those benefit arrangements (hereinafter, collectively, the Plans) include its regular and supplemental tax-sheltered annuity and custodial account programs; its early retirement incentive program; its severance pay plan; its employer-paid group medical and dental insurance plan; its cafeteria plan to provide employees with choices with respect to health insurance coverage, dental coverage, and a dependent care assistance program;³ its group life and accidental death and dismemberment insurance plan; and its group long term disability plan.

The Saint Joseph's University Employee Benefits Committee (hereinafter, the Committee) administers the Plans. That Committee consists of three or more members. The members of the Committee are appointed by the Board, which you describe as controlled by the Church through the Order and the Province. You also represent that two members of the Order serve on the Committee. The Committee's sole function appears to be the Plans' administration.

Your submission includes a private letter ruling that IRS issued to the Plans on August 5, 1994. That letter ruling concludes that the Plans are church plans within the meaning of Code section 414(e). Further, you do not represent

³ The Department has indicated, see, e.g., ERISA Advisory Opinion 88-10A, that, under certain conditions, an employer's dependent care assistance program for its employees may not be an "employee welfare benefit plan" covered by Title I of ERISA. This letter is not intended to address the issue whether, if "church plan" status were not to cover the University's dependent care assistance program, that program would constitute an "employee welfare benefit plan" under Title I of ERISA.

that the University has made any election pursuant to Code section 410(d) on behalf of any Plans that provide pension benefits.⁴

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 Province constitute an integral part of the Church by virtue of the educational ministries they perform. Further, the Order, which is exempt from tax pursuant to section 501(c)(3) of the Code, clearly shares common religious bonds and convictions with the Church.

The Church through the Order controls the University, which is a civil law corporation, because of the following factors: 10 members of the Order are among the 27 individuals who both serve as trustees on the Board and constitute the sole corporate members of the University; representatives of the Order are consulted by Board trustees in selecting the University's president; the current University president is a member of the Order, as intended by

⁴ Section 4(b)(2) of ERISA excludes from Title I coverage church plans as defined in section 3(33) of Title I of ERISA, excepting only those plans that have made the Code section 410(d) election. We express no opinion concerning whether any of the Plans, if they meet the definition of an "employee pension benefit plan" in ERISA section 3(2), may make the Code section 410(d) election and become covered by Title I of ERISA.

University bylaws; the University president must select, ordinarily from among the members of the Order, the University's director of campus ministry, whose activities promote the University community's religious welfare and to whom the Order, the University's lay faculty, and its staff provide personal assistance; and the University's academic affairs committee, which is a standing committee of the Board, reviews, and recommends to the Board, all the University's educational policies of the University and is responsible for the University's identity with the Order.

In addition, the University is "associated with" the Church, within the meaning of section 3(33)(C)(iv) because of factors that assure that the University adheres to the tenets and teachings of the Church and thus evidence that it shares common religious bonds and convictions with the Church, including that the Church controls the University through the Order and its Province; that members of the Order serve among the University's corporate members, among its trustees, as its president, and as its director of campus ministry; and that the Directory lists the University. Also, because of the Directory listing applicable to the University and because of the corresponding group exemption that IRS granted to the Church, the University 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 University 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 reason 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 the Committee's administration of the Plans 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 benefits. It appears that the Church through the Order and its Province controls the Committee because the Order and the Province control who serves as trustees on the Board that appoints members to the Committee. Further, the Church's control of the Committee through the Order and the presence of two members of the Order on the Committee assure that the Committee adheres to the tenets and teachings of the Church, thus evidencing 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, and Plan participants and beneficiaries should be so informed.

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