

U.S. Department of Labor

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



June 19, 1995

95-12A
ERISA SECTION 3(33), 4(b)(2)

Mr. S. Howard Kline
Buchanan Ingersoll
600 Grant Street, 58th Floor
Pittsburgh, Pennsylvania 15219-2887

Dear Mr. Kline:

This is in reply to your correspondence on behalf of the Sisters of the Good Shepherd of Washington, D.C., Inc. (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 Employees' Retirement Plan of the Sisters of the Good Shepherd (hereinafter, the Plan) for eligible employees of the Order and of its related institutions. Specifically, you question whether the Plan is a church plan within the meaning of section 3(33) of Title I of ERISA.

Your correspondence contains the following facts and representations. The Order, which is a religious congregation of women, is known by the above title in its incorporated form but is otherwise known as the Washington Province of the Congregation of Our Lady of Charity of the Good Shepherd.¹ The Order is organized within, and shares common religious bonds and convictions with, the Roman Catholic Church (hereinafter, the Church). Its governing body consists of a provincial superior and her provincial council, all of whom are members of the Order elected by the Order's other members. In accordance with the Order's bylaws, the Order's provincial superior and her provincial council govern the incorporated Order as its board of directors.

The main religious mission of the Order is dedication to works of education and charity. In fulfillment of the Order's mission, the Order operates two institutions, namely, the House of the Good Shepherd in Baltimore, Maryland, (hereinafter, Good Shepherd-Baltimore) and the Good Shepherd Corporation in Clarks Summit, Pennsylvania (hereinafter, Good Shepherd-Clarks Summit).

Good Shepherd-Baltimore provides residential treatment for troubled adolescent girls and is organized as a nonprofit, membership corporation under Maryland law. You represent that Good Shepherd-Baltimore operates under the supervision of the Order. First, the individuals who constitute the provincial council of the Order act as the corporate members of Good Shepherd-Baltimore. Second, only the corporate members of Good Shepherd-Baltimore may amend its bylaws and elect its board of directors (hereinafter, the GSB Board), which consists of from 23 to 35 directors, of whom at least five must be members of the Order. Finally, the provincial superior of the Order serves ex officio as the chairperson of the GSB Board.

Good Shepherd-Clarks Summit provides special educational resources and is organized as a nonprofit, membership corporation under Pennsylvania law. You represent that Good Shepherd-Clarks Summit operates under the supervision of the Order. First, the members of the provincial council of the Order also serve as the corporate members of Good Shepherd-Clarks Summit. Second, only those corporate members of Good Shepherd-Baltimore may amend its articles of incorporation and bylaws and elect its board of directors (hereinafter, the GSCS Board), which consists of from 7 to 25 directors. Finally, the chairperson of Good Shepherd-Clark Summit's corporate

¹ The Order is incorporated under the laws of the District of Columbia as a nonprofit corporation.

membership, who is a member of the Order, serves ex officio as a member of the executive committee of the GSCS Board.

The Order, Good Shepherd-Baltimore, and Good Shepherd-Clarks Summit are each listed in The Official Catholic Directory (P.J. Kenedy & Sons) (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, Good Shepherd-Baltimore, and Good Shepherd-Clarks Summit.

The Order, Good Shepherd-Baltimore, and Good Shepherd-Clarks Summit have employees. Further, you represent that the Plan is a defined benefit pension plan that is intended to provide retirement benefits for those employers' eligible employees. You further state that only employees of Good Shepherd-Baltimore are currently accruing benefits pursuant to the Plan.

An administrative committee (hereinafter, the Committee) is responsible for administering the Plan. You represent that the Committee consists of at least three individuals who are appointed by the Order's provincial council. The sole purpose of the Committee appears to be administration of the Plan, which provides retirement benefits for employees.

To further document your request, you submitted a private letter ruling that IRS issued to the Plan on May 8, 1995. The private letter ruling concludes that the Plan is a church plan within the meaning of Code section 414(e). You indicate that no election pursuant to Code section 410(d) has been made as to the Plan.²

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.

It appears that the Order is an integral part of the Church by virtue of the education and charitable ministries that it performs. Further, the Order is exempt from tax pursuant to section 501(c)(3) of the Code, is controlled by the Church, and is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA because it clearly shares common religious bonds and convictions with the Church.

The Church through the Order controls Good Shepherd-Baltimore and Good Shepherd-Clarks Summit. First, the Church controls those institutions of the Order through the Order's provincial council, which is its governing body, because the members of the Order's provincial council serve as the sole corporate members of each of those institutions, elect the directors for the boards of directors for each of those institutions, and may amend the legal documents (i.e., articles of incorporation and/or bylaws, as applicable).

In addition, Good Shepherd-Baltimore and Good Shepherd-Clarks Summit are "associated with" the Church within the meaning of section 3(33)(C)(iv) because of factors that assure they adhere 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 Church control through the Order (as discussed above); Directory listings applicable to Good Shepherd-Baltimore and Good Shepherd-Clarks Summit; participation by members of the Order as the corporate members of Good Shepherd-Baltimore and of Good Shepherd-Clarks Summit; participation by at least five members of the Order in the GSB Board; participation by the provincial superior of the Order as the chairperson of the GSB Board;

² 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.

and participation of a member of the Order in the executive committee of the GSCS Board. Also because of the applicable Directory listings and the corresponding group exemption IRS granted to the Church, Good Shepherd-Baltimore and Good Shepherd-Clarks Summit are exempt from tax within the meaning of section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with the Order, Good Shepherd-Washington, or Good Shepherd-Clarks Summit 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 section 3(33); and the Church, as employer, is deemed to have established and to maintain the Plan that is the subject of this opinion.

In addition to the above reason for concluding that the Plan meets the church plan definition in section 3(33), the Plan may be considered a church plan because it is administered by the Committee. First, it appears that the Committee's principal purpose or function is administration of the Plan. It also appears that the Committee is controlled by the Church through the Order because the Order's governing body, which (as noted above) consists of members of the Order who are elected by the Order's other members to govern them, appoints the members of the Committee. In addition, the Church's control of the Committee through the Order assures the Committee's adherence to the tenets and teachings of the Church and thus evidences 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). Because the Committee's principal purpose or function is administration of plans for the provision of employee retirement benefits and because the Committee is both controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA, the Committee's administration of the Plan, by operation of section 3(33)(C)(i) of Title I of ERISA, also assures that the Church is deemed to maintain the Plan.

For the above reasons and based on your representations, it is the opinion of the Department that the Plan, which is a plan for individuals whose employment is with the Order, Good Shepherd-Baltimore, or Good Shepherd-Clarks Summit, constitutes a church plan within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(iii) and sections 3(33)(C)(i) 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 Plan is 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.

Sincerely,

ROBERT J. DOYLE
Director of Regulations and Interpretations