U.S. Department of Labor Pension and Welfare Benefits Administration
Washington, D.C. 20210

June 19, 1995

95-13A
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 Mercy Life Center Corporation (hereinafter, MLCC), in Pittsburgh, Pennsylvania. You request an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the MLCC Pension Plan (hereinafter, the Plan) for employees of MLCC and its related institutions, all of which you describe as institutions of the Religious Sisters of Mercy (hereinafter, RSM). 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. RSM is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (hereinafter, the Church). According to your representations, RSM's generalate located in Silver Spring, Maryland, serves as the governing body for RSM in the United States and is presided over by a superior general, who is a member of RSM.

RSM is subdivided into provinces based on the sisters' geographic location. Each such province is generally subordinate to RSM and is exclusively composed of members who are also members of RSM. Nevertheless, each province is itself a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Church, and the governing body of each province supervises the members thereof. One of RSM's provinces, which is known as the Sisters of Mercy of the County of Allegheny (hereinafter, the Province), operates from a convent in Pittsburgh, Pennsylvania. The members of that Province are governed by the Province's president, who (as discussed above) is a member both of the Province and of RSM.

One of the main charitable purposes of RSM and of its provinces, including the Province, is fulfilling its health services ministry. Specifically, both RSM and the Province establish health care institutions. In the case of the Province, they include nursing homes and homes for the elderly.

To further their common health ministry, RSM and most of its provinces jointly formed the Eastern Mercy Health System (hereinafter, EMHS).[1] EMHS is a Pennsylvania nonprofit, membership corporation. You describe EMHS as subordinate to RSM and its provinces, including the Province, because the superior general of RSM and the major superiors (or presidents) of each of RSM's provinces, including the Province, are the corporate members of EMHS.

[1] We note that ERISA Opinion 91-14A concluded that employee benefit plans of EMHS for its employees and for employees of subordinate institutions were church plans within the meaning of section 3(33) of ERISA. We also note that, although EMHS was the sole corporate member of entities whose benefit plans were described in several other ERISA Opinions, EMHS benefit plans were not the subject of those advisory opinions.

EMHS supervises other corporations that RSM or its provinces formed to provide health care. Specifically, EMHS coordinates the capital development, purchasing, auditing and legal fees, and other activities of those corporations.

One corporation that EMHS supervises is Pittsburgh Mercy Health System (hereinafter, PMHS). PMHS is organized as a Pennsylvania nonprofit, membership corporation. Moreover, subject to certain powers over, and responsibilities for, the operations of PMHS that are reserved to the Province, EMHS serves as the sole corporate member of PMHS. Finally, PMHS has a board of trustees (hereinafter, the PMHS Board) consisting of a fixed number of trustees,[2] as ratified by the Province, and each trustee who serves on the PMHS Board is elected by his or her fellow trustees on the PMHS Board, subject to approval of his or her nomination by EMHS.

PMHS supervises health care institutions of the Province, including MLCC. MLCC is organized as a Pennsylvania nonprofit, membership corporation in which PMHS is the sole corporate member. According to MLCC bylaws, it is organized with a board of trustees (hereinafter, the MLCC Board), which consists of three to nine trustees, one-third of whom must be members of the Province and all of whom are elected only after approval of their nomination by PMHS. In addition, certain powers over MLCC are reserved to EMHS in MLCC bylaws.

MLCC, on behalf of EMHS and PMHS, supervises both St. Joseph Nursing and Health Care Center Inc. and St. Pius X Residence, Inc. (hereinafter, the Subsidiaries). Each of those Subsidiaries provides long-term health and custodial care to meet the special housing, health, and financial needs of elderly members of the community. Further, each is organized as a Pennsylvania nonprofit corporation with bylaws and a board of trustees (hereinafter, collectively, the Subsidiaries' Boards). As provided by the Subsidiaries' bylaws, those corporations are subordinate to EMHS, PMHS, and MLCC. The Subsidiaries' bylaws provide for reservation of specific corporate powers to EMHS and PMHS, and, as for MLCC's supervision of the Subsidiaries, those bylaws provide that MLCC is the sole corporate member of each of the Subsidiaries and that the MLCC Board approves election of all trustees on each of the Subsidiaries' Boards after their nomination by their fellow trustees.

RSM, the Province, EMHS, PMHS, MLCC, and the Subsidiaries are 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 Subsidiaries, MLCC, PMHS, EMHS, the Province, and RSM. You also represent that, in separate letters pursuant to Code section 501(c)(3), IRS accorded exemptions from tax to MLCC and to both of its Subsidiaries and, as noted in ERISA Opinion 91-14A, IRS in a separate letter also accorded EMHS its own separate exemption from tax pursuant to Code section 501(c)(3).

MLCC and each of the Subsidiaries have employees. Further, you represent that the MLCC Pension Plan provides employee benefits for eligible employees of MLCC and for eligible employees of its two Subsidiaries.

The MLCC Board established and controls a benefits committee (hereinafter, the Committee) to administer the Plan. You represent that the Committee's sole purpose is administration of the Plan, which provides retirement benefits for employees. At least three individuals must serve on the Committee, and all three individuals on the Committee are appointed by the MLCC Board, which (as noted above) is under the control of PMHS and is comprised, as to at least one-third of its membership, of members of the Province.

To further document your request, you submitted a private letter ruling that IRS issued to the Plan on July 18, 1994. The private letter ruling concludes that the Plan is a church plan within the meaning of Code section 414(e).

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[2] As specified in PMHS bylaws, the PMHS Board consists of not less than 14 nor more than 18 trustees.

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.[3]

It appears that RSM and the Province are integral parts of the Church by virtue of the health care ministries they perform. Further, RSM and the Province 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 RSM and the Province controls EMHS, PMHS, MLCC, and the Subsidiaries. First, the Church controls EMHS, a civil law corporation, through RSM, which includes the Province, because the major superiors of each of RSM's provinces, including the Province, serve ex officio as the permanent corporate members of EMHS. Second, the Church controls PMHS, a civil law corporation, through RMS, through the Province and through EMHS because EMHS is the sole corporate member of PMHS and supervises it, subject to those powers over, and responsibilities for, the PMHS Board that are reserved to the Province. Third, the Church controls MLCC, a civil law corporation, through RSM, the Province, EMHS, and PMHS because, subject to reservation to EMHS of certain corporate powers over MLCC, PMHS is the sole corporate member of MLCC and must approve election of all trustees to the MLCC Board. Finally, the Church controls the Subsidiaries, which are two separate civil law corporations, through RSM, the Province, EMHS, PMHS and MLCC because, subject to reservation of certain corporate powers over the Subsidiaries to EMHS and PMHS, MLCC serves as the sole corporate member of each of the Subsidiaries and must approve the nominations of all trustees elected to either of the Subsidiaries' Boards by their fellow trustees.

In addition, EMHS, PMHS, MLCC, and the Subsidiaries 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 RSM and the Province of EMHS, of PMHS, of MLCC, and of MLCC's Subsidiaries (as discussed above; Directory listings applicable to the Subsidiaries, MLCC, PMHS, and EMHS; participation by members of RSM as the corporate members of EMHS; and participation by members of the Province in the MLCC Board. Also because of the applicable Directory listings and the corresponding group exemption IRS granted to the Church, MLCC, and the Subsidiaries are exempt from tax within the meaning of section 501(c)(3) of the Code. Finally, because of exemptions they separately obtained from IRS, EMHS, MLCC, and the Subsidiaries 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 MLCC or with one of the Subsidiaries 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 the Committee administers them. First, it appears that the Committee's principal purpose or function is administration of the Plan. It also appears that the Committee is

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[3] Section 4(b)(2) creates an exception to the church plan exclusion for only those (pension) plans that have made the Code section 410(d) election. You have not indicated in your submission that the Plan has made, or intends to make, a Code section 410(d) election.

controlled by the Church through MLCC because the MLCC Board, which (as noted above) is under the control of PMHS and is comprised, as to the extent of one-third of its membership, of members of the Province. In addition, control of the Committee by the Church through MLCC 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 MLCC or with one of the Subsidiaries, 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