

U.S. Department of Labor

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



July 10, 1996

96-10A
ERISA SEC. 3(33)

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

RE: Lutheran Home Care Services, Inc.
Identification # A00349
Request For Advisory Opinion

Dear Mr. Kline:

This is in response to your letter on behalf of Lutheran Home Care Services, Inc. in which you request an advisory opinion as to the application of Title I of the Employee Retirement Income Security Act ("ERISA") to the Lutheran Home Care Services, Inc. Group Health Plan and the Lutheran Home Care Services, Inc. Tax-Sheltered Annuity Retirement Plan ("the Plans"). Specifically, you inquire whether the Plans are "church plans" within the meaning of section 3(33) of ERISA and therefore exempt from coverage under Title I of ERISA pursuant to section 4(b)(2) of ERISA.

The term "church plan" is defined in virtually identical terms in both section 3(33) of Title I of ERISA and section 414(e) of the Internal Revenue Code. The Internal Revenue Service has examined the Plans and has concluded that they are "church plans" within the definition of section 414(e) of the Code. See Priv. Ltr. Rul. 9446037 (11/18/94). We see no reason to disagree with the analysis and conclusion of the Internal Revenue Service. We conclude that, to the extent that the structure and operation of Lutheran Home Care Services, Inc. and the Plans is as described in the private letter ruling referred to above, the Plans are "church plans" within the meaning of section 3(33) of Title I of ERISA and therefore exempt from coverage pursuant to section 4(b)(2) of said Title.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Susan G. Lahne
Chief, Division of Coverage
Office of Regulations and Interpretations