

U.S. Department of Labor

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



July 26, 1996

96-13A
ERISA SEC. 3(33)

Mr. James F. Podheiser
Stradley, Ronon, Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, Pennsylvania 19105-7098

RE: Request For Advisory Opinion

Dear Mr. Podheiser:

This is in response to your letter on behalf of La Salle College High School (the School) of Philadelphia, Pennsylvania, in which you request an advisory opinion as to the application of Title I of the Employee Retirement Income Security Act ("ERISA") to the La Salle College High School 403(b) Retirement Plan and the La Salle College High School Flexible Compensation 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 in a recent private letter ruling, a copy of which you have submitted to us, that they are "church plans" within the definition of section 414(e) of the Code. We note that the Plans are established and maintained by the School, which was established and is operated directly by the Institute of the Brothers of the Christian Schools, a religious order of the Roman Catholic Church of the United States. We see no reason to disagree with the analysis and conclusion of the Internal Revenue Service. We therefore conclude that, to the extent that the structure and operation of the School and the Plans are 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