

U.S. Department of Labor

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



September 25, 1996

96-18A
ERISA SEC. 3(33)

Ms. Sharon L. Klingelsmith
Drinker, Biddle, & Reath
1345 Chestnut Street
Philadelphia PA 19107-3496

RE: ORI Case file A00550

Dear Ms. Klingelsmith:

This is in response to your correspondence on behalf of Brook Lane Psychiatric Center, Inc. (the Center) in Hagerstown, Maryland, requesting an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an opinion concerning whether the Center's benefit arrangements for its employees (namely, its Pension Plan, its Group Benefit Plan, and its Supplementary Retirement Plan (collectively, the Plans)), are "church plans," as defined in section 3(33) of Title I of ERISA, and therefore excluded from ERISA Title I coverage by ERISA section 4(b)(2).

Your submission on behalf of the Plans contained extensive documentation of the facts on which your request is based, including a copy of a private letter ruling recently issued by the Internal Revenue Service (IRS) to the Plans. In that ruling, IRS concluded, as requested by the Plans, that they are each "church plans" within the meaning of section 414(e) of the Internal Revenue Code (the Code). We note that the Plans are established and maintained by the Center, which is controlled by Mennonite Health Services, an entity jointly controlled by several church denominations (i.e., Brethren in Christ, General Conference Mennonite, Mennonite Brethren, and Mennonite).

As you are aware, the "church plan" definition in Code section 414(e) is virtually identical to the definition of that term in section 3(33) of Title I of ERISA. Insofar as you represent that the Center and the Plans are operated and structured as described in the ruling responding favorably to the Plans' request for clarification of their status pursuant to Code section 414(e), we do not disagree with the analysis and conclusion reached by IRS in that ruling.

Accordingly, to the extent that the Plans and the Center currently operate in substantially the same manner described to IRS for the purpose of obtaining the Plans' ruling, we conclude that the Plans meet the church plan definition in section 3(33) of Title I of ERISA. Provided that none of the Plans, if entitled to do so, has made any election pursuant to Code section 410(d), ERISA section 4(b)(2) therefore excludes the Plans from coverage under Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of the 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