

**U.S. Department of Labor**

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



October 31, 1996

96-24A  
ERISA SEC. 3(33)

Ms. Michele Berman Golkow  
Ballard Spahr Andrews & Ingersoll  
1735 Market Street, 51st Floor  
Philadelphia, PA 19103-7599

Dear Ms. Golkow:

This responds to your correspondence on behalf of the Moorestown Friends School Association (the School) in Moorestown, New Jersey, requesting an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the School's pension plan for its employees, the Moorestown Friends School Pension Plan (the Plan), is a "church plan," 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 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 School. In that ruling, IRS concluded, as requested by the School, that the Plan is a "church plan" within the meaning of section 414(e) of the Internal Revenue Code (the Code). We note that the Plan is established and maintained by the School, which is controlled by the Moorestown Friends Monthly Meeting, a religious congregation governed and maintained according to the basic tenets of the Religious Society of Friends.

As you know, 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 School and the Plan are structured and operated as described in the ruling referred to above, we do not disagree with the analysis and conclusion reached by IRS in that ruling.

Accordingly, to the extent that the School and the Plan currently operate in substantially the same manner described to IRS for the purpose of obtaining the private letter ruling, we conclude that the Plan meets the church plan definition in section 3(33) of Title I of ERISA. Provided that the Plan has not made an election pursuant to Code section 410(d), ERISA section 4(b)(2) therefore excludes the Plan 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