

U.S. Department of Labor

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



January 6, 1997

97-01A
ERISA SEC. 3(33)

Ms. Helen M. Morrison
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606-5096

Dear Ms. Morrison:

This responds to your correspondence on behalf of ServantCor of Kankakee, Illinois, 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 ServantCor Corporate Retirement Plan and certain welfare benefit plans maintained by ServantCor (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 contained extensive documentation of the facts on which your request is based, including a copy of a private letter ruling issued by the Internal Revenue Service (IRS) to ServantCor. In that ruling, IRS concluded, as requested by ServantCor, that the Plans are "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 ServantCor, which is established and controlled by the Servants of the Holy Heart of Mary, a religious institute of the Roman Catholic Church.

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 ServantCor and the Plans 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 ServantCor and the Plans currently operate in substantially the same manner described to IRS for the purpose of obtaining the private letter 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 an 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