

U.S. Department of Labor

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



March 21, 1997

97-09A
ERISA SEC. 3(33)

I. Lee Falk, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 19103-6993

Re: A00607

Dear Mr. Falk:

This replies to your correspondence on behalf of Tressler Lutheran Services ("TLS") requesting an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Specifically, you request an opinion as to whether the Tressler Lutheran Services Employees Pension Plan, the Thrift Plan for the Employees of Tressler Lutheran Services, and certain specified welfare plans¹ sponsored by TLS (collectively the "Plans") are church plans within the meaning of section 3(33) of Title I of ERISA and therefore excluded by ERISA section 4(b)(2) from coverage under Title I of ERISA.

You submitted to the Department of Labor documentation about each Plan, including a private letter ruling recently issued by the Internal Revenue Service ("IRS") to the Plans. In that private letter ruling the IRS concluded, based on representations provided by the Plans, that the Plans constituted church plans within the meaning of section 414(e) of the Internal Revenue Code ("Code"). As you know, section 414(e) of the Code defines the term "church plan" using language that is virtually identical to ERISA section 3(33).

To the extent that TLS and each Plan is currently operated in substantially the same manner as was described to the IRS for purposes of obtaining a private letter ruling, we conclude that the Plans meet the church plan definition in section 3(33) of Title I of ERISA. Provided that, as you represent, 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 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

¹ The specified welfare plans are as follows: Group Dental Program (Delta Dental of Pennsylvania); Long Term Disability Program (Hartford Life and Accident Insurance Company); Life Insurance and Accidental Death and Disability Insurance (Hartford Life and Accident Insurance Company); Major Medical Health Care Insurance (Capital Blue Cross/Pennsylvania Blue Shield); Geisenger Group Health Plan; Aetna Health Plan HMO; HealthAmerica Pennsylvania, Inc. HMO; Employee Assistance Program (Mazzitti & Sullivan EAP Services, Inc.); and AFLAC Premier Cancer Insurance.