

U.S. Department of Labor

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



April 24, 1997

97-13A
ERISA SEC. 3(33)

Ms. Robin S. Lazarow
Witman, Stadtmauer & Michaels
26 Columbia Turnpike
Florham Park, New Jersey 07932-2246

Dear Ms. Lazarow:

This responds to your correspondence on behalf of Saint Dominic Academy (hereinafter, the Academy), a private educational institution operated in Jersey City, New Jersey, by the Dominican Sisters of Caldwell, a religious congregation of women within the Roman Catholic Church. You request an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Saint Dominic Academy Pension Plan (hereinafter, the Plan), which provides retirement benefits solely for the Academy's employees. Specifically, you request an opinion that the Plan is a church plan within the meaning of section 3(33) of Title I of ERISA.

You submitted to the Department of Labor documentation about the Plan, including a private letter ruling recently issued by the Internal Revenue Service (IRS) to the Plan. In that private letter ruling the IRS concluded, based on representations provided by the Plan, that the Plan constituted a church plan within the meaning of section 414(e) of the Internal Revenue Code (hereinafter, the 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 the 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 Plan meets the church plan definition in section 3(33) of Title I of ERISA. Further, provided that the Plan has made no 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 that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Susan G. Lahne
Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations