

**U.S. Department of Labor**

Office of Pension and Welfare Benefit Programs  
Washington, D.C. 20210



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85-14A  
Sec. 3(33), 4(b)(2)

Mr. W. Russell Hamilton, III  
Muller, Mintz, Kornreich, Caldwell  
Casey, Crosland & Bramnick, P.A.  
Suite 1800, One Biscayne Tower  
Two South Biscayne Boulevard  
Miami, Florida 33131

Dear Mr. Hamilton:

This is in reply to your letters of February 17 and April 4, 1984, requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Retirement Plan for Employees of Holy Cross Hospital (the Retirement Plan) would be a church plan within the meaning of section 3(33) of title I of ERISA and therefore exempt from coverage under that title pursuant to section 4(b)(2) of ERISA.

You advise that Holy Cross Hospital, Fort Lauderdale, Florida (the Hospital) is a not-for-profit corporation under the Congregation of the Sisters of Mercy, Pittsburgh, Pennsylvania (the Sisters). Both the Hospital and the Sisters are listed in the Official Catholic Directory Anno Domini 1983 (P. J. Kennedy & Sons, New York) as agencies, instrumentalities and/or institutions operated by the Roman Catholic Church in the United States and are represented to be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. The Hospital is under the control of the Board of Trustees which is comprised of 5 ex-officio members who are Trustees by virtue of positions they hold within the Sisters or the Hospital, 1 ex-officio member selected by the other Trustees and between 9 and 27 members elected by the Board of Members. The Board of Members is comprised of those persons holding designated positions in the Sisters and up to four lay members appointed by the Board of Members. When the articles of incorporation of the Hospital were amended on December 1, 1972, seven individuals from the Sisters were designated as Members.

The Retirement Plan was established effective as of January 1, 1982, by the Hospital to provide a pension plan for employees of the Hospital. The Retirement Plan is administered by a Retirement Committee appointed by the Board of Trustees of the Hospital. You further advise that the sole function of the Retirement Committee is to administer the Retirement Plan. Both the Hospital

and the Retirement Committee share common religious bonds and convictions with the Roman Catholic Church.

We note that the Internal Revenue Service has issued a ruling letter (dated September 18, 1984) stating the Retirement Plan is a church plan within the meaning of section 414(e) of the Internal Revenue Code.

Section 4(b)(2) of ERISA excludes from coverage under title I of ERISA any plan which is a church plan as defined in section 3(33) of ERISA. The term "church plan" is defined in section 3(33) of ERISA, in pertinent part, as:

(33)(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954.

\* \* \*

(C) For purposes of this paragraph--

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes--

\* \* \*

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1954 and which is controlled by or associated with a church or a convention or association of churches; ....

\* \* \*

(iii) A church or a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 shall be deemed the employer of any individual included as an employee under clause (ii).

(iv) An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches....

Based on the information you submitted, it is the position of the Department of Labor that the Retirement Plan for Employees of Holy Cross Hospital would be a church plan within the meaning of section 3(33) of ERISA. Accordingly, such a pension plan would be exempt from coverage under title I of ERISA pursuant to section 4(b)(2) of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel  
Acting Assistant Administrator for Regulations and Interpretations