

U.S. Department of Labor

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



OCT 21 1985

85-35A

Mr. John J. Hunter
Stradley, Ronon, Stevens & Young
1100 One Franklin Plaza
Philadelphia, Pennsylvania 19102

Dear Mr. Hunter:

This is in reply to your letter of May 24, 1985, and your previous correspondence directed to the Department of Labor (the Department) requesting an advisory opinion on behalf of Holy Redeemer Hospital (the Hospital) concerning the definition of the term "church plan" in section 3(33) of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an opinion as to whether the Retirement Plan for Employees of Holy Redeemer Hospital (the Retirement Plan) and the Holy Redeemer Hospital Thrift Plan (the Thrift Plan) qualify as church plans within the meaning of ERISA section 3(33), as amended by the Multiemployer Pension Plan Amendments Act of 1980.

Your correspondence contains the following facts and representations. Daughters of the Most Holy Redeemer, Inc. operates under the name Sisters of the Holy Redeemer (the Sisters). The Sisters is an incorporated entity whose purpose is, in pertinent part, to function as a religious order, to nurse, cater to, care and provide for, comfort and aid the sick, needy, and aged in homes, hospitals, and institutions.

The Hospital is a Pennsylvania non-profit corporation owned and operated by the Sisters. The Hospital is organized on a non-stock membership basis, all of the members of which must be perpetually professed members of the Sisters. The business and affairs of the Hospital are managed by a Board of Directors (the Hospital Board). Hospital bylaws describe the Hospital Board as consisting of 22 members elected by the members of the Hospital. The Hospital Board must include 12 members of the Hospital (including the Provincial Superior of the Sisters) plus one member of the Catholic clergy representing the Archdiocese of Philadelphia.

Both the Hospital and the Sisters are represented as having tax-exempt status under section 501 of the Internal Revenue Code (the Code). In this regard, you submitted a letter dated August 2, 1984, to the United States Catholic Conference from the Internal Revenue Service (IRS) concluding that church-controlled agencies and other entities appearing in the Official Catholic Directory (P. J. Kenedy & Sons, New York) for 1984 are exempt from Federal tax under Code

section 501(c)(3). You also enclosed excerpts from the Official Catholic Directory listing both the Sisters and the Hospital.

The Retirement Plan is a defined benefit pension plan and the Thrift Plan is a defined contribution pension plan. Each plan is insured under group annuity contracts. The Hospital has not elected to have title I of ERISA or Code provisions apply to the plans. You submitted a letter from IRS dated May 16, 1985, concluding that both the Retirement Plan and the Thrift Plan are church plans within the meaning of Code section 414(e).

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 that the Retirement Plan for Employees of Holy Redeemer Hospital and the Holy Redeemer Hospital Thrift Plan would be church plans within the meaning of section 3(33) of ERISA. Accordingly, such pension plans 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