

**U.S. Department of Labor**

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



JAN 13 1986

86-03A  
Sec.

Mr. John P. Gallagher  
Schubert, Bellwoar, Mallon & Walheim  
1330 Two Penn Center Plaza  
Philadelphia, Pennsylvania 19102-1890

Dear Mr. Gallagher:

This is in reply to your correspondence on behalf of the Sisters of Mercy at Merion Station, Pennsylvania, (the Order) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Merion Mercy Academy Defined Benefit Plan (the Plan). Specifically, you request an advisory opinion concerning whether the Plan is a church plan within the meaning of section 3(33) of title I of ERISA and, accordingly, whether it is excluded from coverage under title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women established according to the tenets of the Roman Catholic Church (the Church). One of the main purposes of the Order is operating educational facilities. You represent that The Official Catholic Directory (P. J. Kenedy & Sons, New York) lists the Order in both current and earlier editions as an agency, instrumentality, and/or institution operated by the Church in the United States. Accordingly, based on the group exemption under section 501(c)(3) of the Internal Revenue Code (the Code) granted to the United States Catholic Conference by the Internal Revenue Service in its letter dated August 2, 1984, you represent that the Order is exempt from tax under section 501(a) of the Code.

The Plan was established July 12, 1977, for the benefit of lay employees of Merion Mercy Academy; the Convent of the Sisters of Mercy at Merion, Pennsylvania; McAuley Convent; and Waldron Academy. The Plan is maintained and operated under the authority of a Plan committee termed the "Pension Committee." The sole purpose of the Pension Committee is administration of the Plan. The Pension Committee consists of four members serving at the direction of Merion Mercy Academy which is in turn subject to the control of the Order. All four members of the Pension Committee are required to be members of the Order. The Order also controls the members of the Pension Committee insofar as it has authority to appoint and remove such members from the Order.

The Order is associated with the Church by reason of sharing common religious bonds and convictions as evidenced by the listing of the Order in the Official Catholic Directory. Members of the Pension Committee share common religious bonds and convictions with the Church. This association with the Church is assured by the fact that all members of the Pension Committee are members of the Order which is part of the Church.

We note that the Internal Revenue Service issued a ruling letter dated June 28, 1985, stating that the Plan is a church plan within the meaning of Code section 414(e) defining the term "church plan" for purposes of the 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 Merion Mercy Academy Defined Benefit Plan 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 provision of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel  
Assistant Administrator for Regulations and Interpretations