

U.S. Department of Labor

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



JAN 21 1986

86-04A
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 St. Joseph of Chestnut Hill of Philadelphia, Pennsylvania, (the Order) concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Retirement Income Plan (the Plan) for the employees of the Sisters of Mt. St. Joseph Convent, Chestnut Hill (the Convent). 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 by section 4(b)(2) of title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious order of women whose purpose is caring for the sick and performing other works of a charitable nature. The Order and Mt. St. Joseph Convent of the Sisters of Chestnut Hill are listed in the Official Catholic Directory Anno Domini 1985 (P.J. Kenedy & Sons, New York) as agencies, instrumentalities and/or institutions operated by the Roman Catholic Church in the United States (the Church). As such, they are represented as being exempt from taxation under section 501(c)(3) of the Internal Revenue Code (the Code).

The Plan, a defined benefit pension plan, was established October 1, 1973, for the benefit of lay employees of the Convent. The Plan is maintained and operated by a Plan Committee whose purpose is administration of the Plan. The Plan Committee consists of three or more members all of whom must be members of the Order. The Plan Committee serves at the direction of the Board of Directors of the Convent. The Board of Directors is subject to the control of the Order. Therefore, the Order also controls the members of the Plan 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 and the Convent in the Official Catholic Directory. Members of the Plan 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 Plan Committee are members of the Order which is part of the Church.

We note that the Internal Revenue Service issued a ruling letter dated May 16, 1985, stating the Plan is a church plan within the meaning of Code section 414(e) defining the term "church plan" for the 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) to 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 the 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 Income Plan for employees of the Convent of the Sisters of St. Joseph of Chestnut Hill, Philadelphia, Pennsylvania 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
Assistant Administrator for Regulation and Interpretations