

**U.S. Department of Labor**

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



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AO 90-45A

Mr. Bradley W. Hanson  
Hughes, Thoreen & Sullivan  
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Suite 200  
P.O. Box 1187  
St. Cloud, Minnesota 56302-1187

Dear Mr. Hanson:

This is in reply to your correspondence concerning applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Sisters of the Order of St. Benedict Retirement Plan (the Plan). Specifically, you request an advisory opinion concerning whether the Plan constitutes a church plan within the meaning of section 3(33) of title I of ERISA and, accordingly, whether the plan is excluded from the requirements of title I of ERISA by section 4(b)(2) thereof.

Your correspondence contains the following facts and representations. The Sisters of the Order of St. Benedict, Saint Joseph, Minnesota (the Order) is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (the Church). One of the main activities of the Order since its establishment in Minnesota in 1857 has been promoting the general welfare of the sick, poor, aged and infirm through works of a charitable nature. The Order was chartered as a not-for-profit corporation under Minnesota law in 1887. Through its listing in The Official Catholic Directory (P.J. Kenedy & Sons) under its canonical name, the Benedictine Sisters of Pontifical Jurisdiction Federation of St. Benedict, the Order is entitled to participate in a group exemption from tax granted to the Church in accordance with section 501(c)(3) of the Internal Revenue Code (the Code) as interpreted by the Internal Revenue Service (IRS).

In furtherance of the Order's mission within the Church, the Order founded the following: The Saint Cloud Hospital (1886), St. Joseph's Home (1900), St. Raphael's Home (1928), College of Saint Benedict (1913), and St. Benedict's Hospital in Ogden, Utah (1945). Additionally, in 1951, the Sisters took over Community Memorial Hospital, changed its name to Queen of Peace Hospital, and established it as a subsidiary of the Order.

College of Saint Benedict and St. Benedict's Hospital are separate subsidiaries of the Order. Specified office holders who are members of the Order form the sole membership of each of these subsidiaries. St. Joseph's Home and St. Raphael's Home were merged into the corporation of the Order in 1975, and, also in 1975, The Saint Cloud Hospital was reorganized as a membership corporation controlled jointly by the Order and the Diocese of the Church in St. Cloud, Minnesota. Five of the ten members of The Saint Cloud Hospital corporation are members of the Order; the other five represent the Diocese of St. Cloud. Each of the above entities is exempt from tax through its listing in The Official Catholic Directory.

When the Plan was established on June 1, 1959, it covered individuals whose employment was with the Order, The Saint Cloud Hospital, St. Joseph's Home, St. Raphael's Home, College of Saint Benedict, Queen of Peace Hospital, and St. Benedict's Hospital. Since that time, and as noted above, two of the original participating entities founded by the Order were merged with the Order. A third, St. Benedict's Hospital, disassociated itself from the Plan and

transferred its share of Plan assets to its own plan. Accordingly, individuals currently covered by the Plan are those whose employment is with the Order, The Saint Cloud Hospital, College of Saint Benedict, and Queen of Peace Hospital. The Plan's Pension Committee has had exclusive authority and discretion to control and manage the operation of the Plan since July 1, 1976. The sole function of the Pension Committee is administration of the Plan for the benefit of Plan participants and beneficiaries. As it is presently constituted, two of the four members of the Pension Committee are members of the Order. The Plan received a ruling letter from the IRS dated August 11, 1989, stating it constitutes a church plan within the meaning of section 414(e) of the Code.

Your request for an advisory opinion regarding "church plan" status involves application of the provisions of sections 4(b)(2) and 3(33) of title I of ERISA to the facts presented. 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 paragraph (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 1986.

(B) The term "church plan" does not include a plan --

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1986), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (ii) of subparagraph (C) (or their beneficiaries).

(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 1986 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 1986 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. . . .

It appears that the Order is an integral part of the Church by virtue of the religious and health care ministries it performs. Furthermore, the Order is tax exempt under section 501(c)(3) of the Code, is controlled by the Church, and is "associated with" the Church within the meaning of section 3(33)(C)(iv) of title I of ERISA insofar as the Order clearly shares common religious bonds and convictions with the Church.

Through the Order the Church retains control over operation of each subsidiary of the Order and each participating entity merged into the Order. Furthermore, the Church, through the Diocese of St. Cloud, and the Order are each represented within the membership of the only remaining participating entity, The Saint Cloud Hospital, thus assuring control by the Church directly as well as through the Order. Each such entity is also "associated with" the Church within the meaning of section 3(33)(C)(iv) of title I of ERISA, insofar as members of the Order by their presence and influence as corporate directors and/or corporate members assure that these participating entities adhere to the tenets and teaching of the Church, and, thus share common religious bonds and convictions with the Church. Furthermore, each such entity is exempt from tax in accordance with section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (the Department) that those individuals whose employment is with entities described above as participating in the Plan constitute employees of organizations which are civil law corporations and which are controlled by, or associated with, the Church within the meaning of section 3(33)(C)(ii)(II) of title I of ERISA. In accordance with section 3(33)(C)(iii) of title I of ERISA, the Church is deemed the employer of these individuals for purposes of the church plan definition in section 3(33).

Furthermore, in accordance with the church plan definition in section 3(33), administration of the Plan by the Pension Committee, which has as its principal purpose or function the administration of a plan for the provision of employee retirement benefits, assures that the plans for individuals whose employment is with the four entities participating in the Plan meet the requirement of section 3(33)(C)(i). Furthermore, the plans do not appear to be excluded from the section 3(33) "church plan" definition by operation of sections 3(33)(B)(i) or (ii) of title I of ERISA.

For the above reasons and based on your representations, the Plan constitutes a church plan within the meaning of section 3(33)(A) of title I of ERISA by operation of section 3(33)(C)(i) of title I of ERISA. Because church plans described in section 3(33) of title I of ERISA are excluded from the requirements of title I of ERISA pursuant to section 4(b)(2) thereof, the Plan is not required to comply with the provisions of title I of ERISA as administered by the Department.

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

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations