



March 8, 1994

Mr. Vincent P. Haley  
Schnader, Harrison, Segal & Lewis  
1600 Market Street, Suite 3600  
Philadelphia, Pennsylvania 19103

**94-05A**  
ERISA SECTION  
3(33), 4(b)(2)

Dear Mr. Haley:

This is in response to your correspondence on behalf of certain hospitals and other institutions of the Religious Sisters of Mercy (hereinafter, the Order). Specifically, you ask whether benefit arrangements for their employees are church plans within the meaning of section 3(33) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Roman Catholic Church (hereinafter, the Church). It is governed by a major superior who is a member of the Order.

The Order has eight geographic divisions or provinces. One of its provinces is the Sisters of Mercy in the City of Philadelphia (hereinafter, the Philadelphia Congregation). You represent that the Philadelphia Congregation, although subordinate to the Order, is itself a religious congregation of women organized within, and sharing common religious bonds and convictions with, the Church. Further, it is governed by a major superior and general councillors who are members of the Order and members of the Philadelphia Congregation.

One of the main charitable activities of the Order and of the Philadelphia Congregation is providing health care facilities. Specifically, the Philadelphia Congregation operates hospitals within its province. However, it appears that the Philadelphia Congregation also operates schools on the grounds of its motherhouse convent in Merion, Pennsylvania.

To further its health ministry, the Order and its eight provinces jointly formed the Eastern Mercy Health System (hereinafter, EMHS).<sup>7</sup> EMHS is a Pennsylvania nonprofit, membership corporation. You describe EMHS as subordinate to the Order and to the Philadelphia Congregation because the major superior of the Order, the major superior of the Philadelphia Congregation, and the major superiors of seven other provinces of the Order are its corporate members.

EMHS supervises other corporations that were formed by the Order to provide health care. Specifically, EMHS coordinates their capital development, purchasing, auditing and legal fees, employee benefits, and national association memberships.

One corporation that EMHS supervises is Mercy Health Corporation (hereinafter, MHC). MHC is a nonprofit, membership corporation. It is subordinate to EMHS in two ways: EMHS is the sole corporate member of MHC, and EMHS must approve candidates for election to MHC's board of trustees (hereinafter, MHC Board). Further, MHC is subordinate to the Philadelphia Congregation in several ways. First, the Philadelphia Congregation's major superior and its general councillors must ratify the election of trustees to the MHC Board. Second, at least a majority of trustees on the MHC Board must be members of the Philadelphia Congregation. Finally, the major superior of the Philadelphia Congregation serves ex officio as a trustee on the MHC Board.

MHC supervises the Philadelphia Congregation's health care operations. Specifically, MHC serves as sole corporate member of two nonprofit corporations: Mercy Health Plan (hereinafter, MHP) and Mercy Elderly Housing MHC, Inc. (hereinafter, Housing).<sup>2</sup> MHC is also sole shareholder of two for-profit corporations: Mercy Catholic Medical Center Eastwick (hereinafter, Eastwick) and Mercy Catholic Medical Center Apothecary (hereinafter, Apothecary).<sup>3</sup>

The primary component of MHC is Mercy Catholic Medical Center of Southeastern Pennsylvania (hereinafter, the Center). The Center is a nonprofit corporation that is subordinate to MHC in two ways: MHC is the sole corporate member of the Center, and MHC, along with EMHS, the Philadelphia Congregation, and the Church, are involved in selecting the Center's board of directors (hereinafter, the Center Board).

Methods for selecting directors for the Center Board assure that the Center is subordinate to MHC, to EMHS, to the Philadelphia Congregation, and to the Church. First, the major superior of the Philadelphia Congregation and an employee or official of the Archdiocese of Philadelphia are ex officio directors on the Center Board. You indicate that their presence on the Center Board assures that the Center is subordinate to the Philadelphia Congregation and to the Church.<sup>4</sup> Second, you describe how Center Board directors who do not serve ex officio are elected and indicate that their election assures that the Center is subordinate to EMHS, to the Philadelphia Congregation, and to MHC. Specifically, MHC elects the Center Board directors from among a list of candidates approved by both EMHS and the Philadelphia Congregation. Additionally, among the five classes of elected directors on the Center Board, at least half of any even-numbered class and at least a majority of any odd-numbered class must be members of the Philadelphia Congregation.

The Center has two nonprofit, Pennsylvania hospitals as subordinate components. They are the Fitzgerald Mercy Hospital in Upper Darby and Misericordia Hospital in Philadelphia (collectively, the Hospitals).

The Hospitals, Housing, the Center, MHC, the Philadelphia Congregation, and the Order are listed in The Official Catholic Directory (P.J. Kenedy & Sons) (hereinafter, the Directory).<sup>5</sup> Accordingly, the group tax exemption letter issued to the United States Catholic Conference by the Internal Revenue Service (hereinafter, IRS) pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code) appears to include the Order, the Philadelphia Congregation, MHC, the Center, Housing, and the Hospitals. You also represent that IRS issued separate letters to EMHS, MHP, and Housing in which IRS accorded them an exemption from tax pursuant to Code section 501(c)(3).

Further, you describe the Center's employees and employees of other subordinates of MHC. Specifically, you represent that the Center has approximately 3,700 employees, that MHP and Housing together have fewer than 200 employees, and that Eastwick and Apothecary together have 20 employees.

You also describe ten employee benefit arrangements primarily for employees of MHC, the Center, and the Hospitals (hereinafter, collectively, the Plans). The Plans include pension benefit arrangements as well as welfare benefit arrangements.

First, the Center established a defined benefit pension plan (hereinafter, the Pension Plan). Trustees for the Pension Plan are chosen by the Center Board. Currently, four trustees are members of the Philadelphia Congregation. You further represent that, at all times since 1970, either all or a majority of Pension Plan trustees were members of the Philadelphia Congregation.

Second, the Center has a tax deferred annuity arrangement pursuant to Code section 403(b) (hereinafter, the Supplemental Pension Plan). You represent that the Center Board controls administration of the Supplemental Plan and may amend or terminate it.

Third, EMHS has purchased insurance policies that provide benefits for five welfare plans. The plans are: two group life insurance/accidental death and dismemberment plans, one for physicians and executives and one for other employees (hereinafter, the AD&D Plans); two long term disability insurance plans, one for physicians and executives and one for other employees (hereinafter, the LTD Plans); and a supplemental life insurance plan (hereinafter, the Life Insurance Plan).

Fourth, the Center has established a voluntary employees' beneficiary association (hereinafter, VEBA) to fund its health and welfare plan and its medical expenses plan (hereinafter, the Health Plans). The Center acts as trustee for the VEBA; also, three members of the Philadelphia Congregation and two lay persons serve on a trust board for the VEBA.

Finally, the Center has a self-funded dental plan (hereinafter, the Dental Plan). The terms and limitations of the Dental Plan are determined by the Center Board.

The Plans range in coverage from under 500 participants to over 3,000 participants. The Life Insurance Plan has approximately 340 participants and the Supplemental Pension Plan has approximately 430 participants, but the Pension Plan, the AD&D Plans, the LTD Plans, and the Dental Plan each have over 2,000 participants. The Health Plans have more than 3,000 participants, including over 450 members of the Philadelphia Congregation and more than 100 employees of the Philadelphia Congregation. Participants in the Health Plans who are employed by the Philadelphia Congregation teach in schools on the grounds of their motherhouse or are food or maintenance workers in the Philadelphia Congregation's convents.<sup>6</sup>

You state that, for each of the Plans, day-to-day administrative functions have been delegated to the Center or to the Center's benefits administration department. It appears that those responsible for the Plans' administrative functions may constitute committees (hereinafter, the Committees). The Committees' principal purpose or function appears to be the administration or funding of one or more of the Plans for the purpose of providing retirement or welfare benefits, or both.

From May 12, 1989, through May 26, 1989, IRS issued ten private letter rulings, one for each of the Plans. In each case, the IRS private letter ruling concluded that the "church plan" definition in section 414(e) of the Code applied to the Plan in question. Moreover, the IRS private letter rulings specified that participation in the Plans by employees of MHC's for-profit corporations, Eastwick and Apothecary, did not affect their "church plan" status.

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 that 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:

... a plan established and maintained (to the extent required in clause (ii) of sub-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 and the Philadelphia Congregation are integral parts of the Church by virtue of the health care ministries they perform.' Further, both the Order and the Philadelphia Congregation are exempt from tax pursuant to section 501(c)(3) of the Code, are controlled by the Church, and are "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA because they clearly share common religious bonds and convictions with the Church.

The Church through the Order and the Philadelphia Congregation controls EMHS, MHC, MHP, Housing, Eastwick, Apothecary, the Center, and the Hospitals. First, the Church through the Order controls EMHS, a civil law corporation, because the Order's major superior, the Philadelphia Congregation's major superior, and the major superiors of the other provinces of the Order serve ex officio as the permanent corporate members of EMHS. Second, the Church through the Order, the Philadelphia Congregation, and EMHS controls MHC, a civil law corporation, in all the following ways: EMHS is the sole corporate member of MHC; the major superior of the Philadelphia Congregation serves ex officio as a trustee on the MHC Board; at least a majority of the MHC Board must be members of the Philadelphia Congregation; EMHS must approve candidates for election to the MHC Board; and the major superior and the general councilors of the

Philadelphia Congregation must ratify the election of each trustee on the MHC Board. Third, the Church through the Order, the Philadelphia Congregation, EMHS, and MHC controls MHP, Housing, Eastwick, and Apothecary because MHC, which is controlled by the Church through the Order, the Philadelphia Congregation, and EMHS, is the sole corporate member of MHP and Housing and is the sole shareholder of Eastwick and Apothecary. Fourth, the Church through the Order, the Philadelphia Congregation, EMHS, and MHC controls the Center, a civil law corporation, in all the following ways: MHC is the sole corporate member of the Center; the major superior of the Philadelphia Congregation serves ex officio as a trustee on the Center Board; an employee of the Archdiocese of Philadelphia serves ex officio as a trustee on the Center Board; EMHS and the Philadelphia Congregation must approve candidates for election to the Center Board; MHC elects the directors on the Center Board; and, among the five classes of directors on the Center Board, at least half of two classes and at least a majority of three classes must be members of the Philadelphia Congregation. Finally, the Church through the Order, the Philadelphia Congregation, EMHS, MHC, and the Center controls the Hospitals because the Center owns and operates the Hospitals.

In addition, EMHS, MHC, MHP, Housing, the Center, and the Hospitals are "associated with" the Church within the meaning of section 3(33)(C)(iv) because of factors that assure they adhere to the tenets and teachings of the Church and thus evidence that they share common religious bonds and convictions with the Church. Those factors include Church control of EMHS, MHC, MHP, Housing, the Center, and the Hospitals through the Order and the Philadelphia Congregation as discussed above; Directory listings applicable to MHC, Housing, the Center, and the Hospitals; participation by a representative of the Church as a permanent director on the Center Board; and participation by members of the Order in EMHS, MHC, MHP, Housing, the Center, and the Hospitals in all of the following ways: the major superior of the Order, the major superior of the Philadelphia Congregation, and the major superiors of the other provinces of the Order permanently serve as the corporate members of EMHS; the major superior of the Philadelphia Congregation permanently serves as a trustee on the MHC Board; at least a majority of trustees on the MHC Board must be members of the Philadelphia Congregation; MHC, in which members of the Philadelphia Congregation participate (as described above), is the sole corporate member of MHP and Housing; the major superior of the Philadelphia Congregation permanently serves as a director on the Center Board; among the five classes of directors on the Center Board, at least half of two classes and at least a majority of three classes must be members of the Philadelphia Congregation; and the Hospitals are components of the Center in which members of the Philadelphia Congregation participate (as described above). Also, because of the applicable Directory listings and the corresponding group exemption IRS granted to the Church, MHC, Housing, the Center, and the Hospitals are exempt from tax within the meaning of section 501(c)(3) of the Code. Finally, because of exemptions they separately obtained from IRS, EMHS, Housing, and MHP are exempt from tax within the meaning of section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with the Philadelphia Congregation, the Center, MHP, Housing, and the Hospitals are employees of organizations that are civil law corporations exempt from tax pursuant to section 501(c)(3) of the Code and that are controlled by, or associated with, the Church within the meaning of section 3(33)(C)(ii)(II) of Title I of ERISA.<sup>8</sup> 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); and the Church, as employer, is deemed to have established and to maintain the Plans that are the subject of this opinion.

In addition to the above reason for concluding that the Plans meet the church plan definition in section 3(33), the Plans may be considered one or more church plans by operation of section 3(33)(C)(i) of Title I of ERISA if their administration by Committees further assures that the Church is deemed to maintain the Plans. Section 3(33)(C)(i) applies to the Plans if the principal purpose or function of each of the Committees is the administration of one or more plans for the provision of employee retirement and welfare benefits and if the Committees are controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA. It appears that the Committees are controlled by the Church through the Order because the Center is controlled by the Church through the Order, the Philadelphia Congregation, EMHS, and MHC. Furthermore, because the Church's control of the Committees through the Order, the Philadelphia Congregation, EMHS, and MHC assures that the Committees adhere to the tenets and teachings of the Church, they evidence that the Committees share common religious bonds and convictions with the Church. Consequently, the Committees are "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA. It also appears that the Committees' sole purpose is administration of one or more of the Plans for the provision of retirement or welfare benefits.

Finally, we have considered issues raised by the tax status of Eastwick and Apothecary and inclusion of their 20 employees in the Plans. It is the Department's position that participation in the Plans by the 20 eligible individuals whose employment is with Eastwick and Apothecary, compared with a total of approximately 340 individuals you describe as eligible to participate in the Life Insurance Plan, which has the fewest participants of any of the Plans, would not appear to exclude the Plans 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, it is the opinion of the Department that the Plans constitute church plans within the meaning of section 3(33)(A) of Title I of ERISA by operation of ERISA section 3(33)(C)(iii). In addition, ERISA section 3(33)(C)(i) appears to describe the Plans. 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 Plans are 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.

This letter relates solely to application of the provisions of Title I of ERISA and, therefore, is not determinative of any particular tax treatment under the Code. We note, specifically, that it may be advisable to seek the views of IRS concerning requirements applicable to health benefit arrangements among the Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> We note that ERISA Opinion 91-14A concluded that EMHS employee benefit plans for its employees and for employees of subordinate institutions were church plans within the meaning of section 3(33) of ERISA. We also note that, although EMHS was the sole corporate member of entities whose benefit plans were described in ERISA Opinions 90-12A, 91-22A, and 93-07A, EMHS benefit plans were not the subjects of those ERISA Opinions.

<sup>2</sup> Housing provides housing facilities and services for the elderly and handicapped. MHP's bylaws state that its purpose is to develop and manage arrangements for delivery of health care services by the Mercy Catholic Medical Center of Southeastern Pennsylvania (discussed below).

<sup>3</sup> Eastwick owns two office buildings connected with two hospitals operated by the Mercy Catholic Medical Center of Southeastern Pennsylvania (discussed below) and other smaller properties used as offices by its staff, and Apothecary operates two pharmacies in connection with the same hospitals.

<sup>4</sup> The Archdiocese of Philadelphia is a geographical and hierarchical division of the Church.

<sup>5</sup> The Directory listing for MHC includes both its nonprofit and for-profit subsidiaries; however, you specify that Eastwick and Apothecary do not claim exemption from tax.

<sup>6</sup> We note that ERISA Opinion 86-03A accorded "church plan" status to a pension arrangement for employees of schools and convents of the Philadelphia Congregation that were, at least in part, operated on the grounds of their motherhouse.



<sup>7</sup> We are assuming for purposes of this opinion that the Philadelphia Congregation's convents and schools on the grounds of its motherhouse are part of the Philadelphia Congregation and are not separate corporations.

<sup>8</sup> The status of individuals whose employment is with Eastwick and Apothecary is discussed below.