



March 23, 1994

Ms. Sharon L. Klingelsmith  
Drinker, Biddle & Reath  
Philadelphia National Bank Building  
1345 Chestnut Street  
Philadelphia, Pennsylvania 19107-3496

**94-11A**  
ERISA SECTION  
3(33), 4(b)(2)

Dear Ms. Klingelsmith:

This is in reply to your correspondence on behalf of Lancaster Mennonite Hospitals (hereinafter, Lancaster-Mennonite), a mental health facility in Mount Gretna, Pennsylvania, which is an institution of the Mennonite Church (hereinafter, the Church). Your correspondence concerns applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether certain benefit arrangements for employees of Lancaster-Mennonite are church plans within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations concerning how the Church is organized, how the Church controls Lancaster-Mennonite, and how Lancaster-Mennonite provides benefit arrangements for its employees.

You represent that Church congregations in the area of Lancaster, Pennsylvania, joined in 1775 to found the Lancaster Conference (hereinafter, the Conference). The Conference, and other similar conferences, comprise the Mennonite General Assembly, which is the principal denominational organization of the Church.' Further, the Conference is listed among recognized Church entities in the Mennonite Yearbook and Directory (Mennonite Publishing House, 1980). Finally, a delegate sent by the Conference represents its component Church congregations on the Mennonite Church General Board, which serves as the Church's executive body.

The delegate from the Conference to the Mennonite General Board is elected by the bishops of the Conference, each of whom represents a district consisting of a group of Church congregations within the Conference. Each bishop within the Conference also belongs to the Conference's Bishop Board (hereinafter, the Bishop Board), which is the executive body of the Conference.

You represent that one of the institutions the Conference has established is Lancaster-Mennonite, which is organized as a Pennsylvania nonprofit corporation.<sup>2</sup> You further represent that Lancaster-Mennonite's organization and its operating guidelines demonstrate its subordination to the Church.

Specifically, Lancaster-Mennonite's bylaws provide that it is operated by a board of directors (hereinafter, the Lancaster Board) that is controlled by the Church. The Lancaster Board comprises 16 to 18 directors: 3 "religious welfare" directors, 3 "community" directors, and up to 12 additional directors. The "religious welfare" directors and the "community" directors on the Lancaster Board are selected by the Bishop Board. An individual elected a "religious welfare" director by the Bishop Board must be a member in good standing in a congregation within the Conference, and at least one "religious welfare" director must be a bishop within the Church. However, in appointing the "community" directors to the Lancaster Board, the Bishop Board need not select members of Church congregations within the Conference. Subject to the approval of the Bishop Board, the Conference elects ten additional directors to the Lancaster Board,<sup>3</sup> and the Bishop Board may, in its discretion, appoint up to two more directors to include other resource personnel or to represent geographical areas of the Conference not adequately represented by elected directors. All 12 of these directors must be members of Church congregations within the Conference.

Moreover, Lancaster-Mennonite's bylaws include a mission statement intended to reflect Church principles and beliefs. Further, its bylaws state that Lancaster-Mennonite will operate consistently "with the policies or standards" of the Conference. You also represent that Lancaster-Mennonite is recognized by the Internal Revenue Service (hereinafter, IRS) as an organization exempt from tax pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code). To document your representation, you submitted a determination letter issued by IRS on September 21, 1966.

The remainder of your representations concern individuals who work in Lancaster-Mennonite's mental health facilities and Lancaster-Mennonite's provision of employee benefit arrangements for them. Lancaster-Mennonite's eligible employees may participate in the following benefit arrangements (hereinafter, collectively, the Plans): the Retirement Plan for Employees of Lancaster-Mennonite Hospitals (hereinafter, the Retirement Plan), the Philhaven Lancaster Dental Plan (hereinafter, the Dental Plan), the Philhaven Lancaster Group Life Insurance Plan, the Philhaven Lancaster Long Term Disability Plan, the Philhaven Hospital Employee Assistance Program,<sup>4</sup> and Lancaster-Mennonite's benefits program primarily for health benefits (hereinafter, the Flexible Benefits Plan).<sup>5</sup>

You represent that the Lancaster Board established by resolution a Benefits Administrative Committee (hereinafter, the Committee). The Committee administers the Plans that are the subject of your request for an advisory opinion. The Lancaster Board appoints and supervises the Committee's three members, each of whom must belong to a Church congregation.

You also submitted an IRS private letter ruling issued to Lancaster-Mennonite on March 16, 1993. The private letter ruling concludes that the Retirement Plan and the Dental Plan are church plans 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 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.

(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 or churches....

It appears that the Conference is a "church" or "a convention or association of churches" within the meaning of section 3(33) and that Lancaster-Mennonite is controlled by the Conference directly and through its Bishop Board, the executive body of the Conference. Specifically, the Conference controls Lancaster-Mennonite because the Conference elects more than a majority of directors on the Lancaster Board. Further, it appears that Lancaster-Mennonite is controlled by the Conference through the Bishop Board because the Bishop Board appoints six directors to the Lancaster Board and because the Bishop Board exercises a right of approval over the election of a majority of directors on the Lancaster Board. Lancaster-Mennonite is also exempt from tax pursuant to section 501(c)(3) of the Code.

Further, Lancaster-Mennonite is "associated with" the Church, within the meaning of section 3(33)(C)(iv) of Title I of ERISA, because Lancaster-Mennonite's adherence to the tenets and teachings of the Church is assured by the following factors: the Conference controls Lancaster-Mennonite directly and indirectly through its Bishop Board; one director who is a bishop of the Church serves on the Lancaster Board; the Lancaster Board consists, except for three directors, of directors who are members of Church congregations; and Lancaster-Mennonite's bylaws require it to be operated consistently with Church beliefs. Because these factors assure that Lancaster-Mennonite adheres to the tenets and teaching of the Church, they also assure that Lancaster-Mennonite shares common religious bonds and convictions with the Church and, thus, that Lancaster-Mennonite is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with Lancaster-Mennonite are considered employees of an organization that is a civil law corporation and that is controlled by, or associated with, a church or convention or association of churches 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 therefore deemed the employer of these individuals for purposes of the church plan definition in section 3(33).

In accordance with the church plan definition in section 3(33), the Church may also be deemed to maintain the Plans because the Committee, whose sole purpose is administration of retirement and welfare benefits for employees of a church, is controlled by and "associated with" the Church and thus meets the requirement of section 3(33)(C)(i). First, the Church controls the Committee because Committee members are appointed by the directors on the Lancaster Board, whose appointments are, in turn, controlled by the Conference directly and through the Bishop Board. Second, the Committee's adherence to the tenets and teachings of the Church is assured because the Lancaster Board, which is, in turn, controlled by the Conference directly and through the Bishop Board (as described above), oversees and supervises Committee members and because Church members serve on the Committee. Because the Committee adheres to the tenets and teachings of the Church, it shares common religious bonds and convictions with the Church and, thus, is "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA.

For the above reasons and based on your representations, it is the view 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 sections 3(33)(C)(i) and 3(33)(C)(iii) 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 Plans are not required to comply with the provisions of Title I of ERISA as administered by the Department and should inform plan participants accordingly.

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 the status of health benefits arrangements among the Plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) is within IRS jurisdiction.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup> The denominational organization has been named the Mennonite General Assembly since 1971; it was formerly the Mennonite General Conference.

<sup>2</sup> You state that Lancaster-Mennonite also uses the names Philhaven Hospital and Philhaven.

<sup>3</sup> A committee to nominate the directors is comprised of one member of the Bishop Board, two members of the Lancaster Board, and the chairman of Lancaster-Mennonite's religious welfare commission, which consists of the three "religious welfare" directors on the Lancaster Board.

<sup>4</sup> Materials submitted with your request describe the Philhaven Hospital Employee Assistance Program as an employer's program of mental health counseling for employees that uses trained personnel. The Department's advisory opinions (for example, Advisory Opinion 83-35A) have interpreted the employee welfare benefit plan definition to include such programs.

<sup>5</sup> Lancaster-Mennonite offers its employees a flexible benefit arrangement (the Flexible Benefit Plan), which provides participants with a choice among various benefits and a tax-free method of paying for medical and dental care premiums and expenses, including contributions required for coverage under the Dental Plan (described above), and for eligible dependent care services. The medical care portion of the Flexible Benefits Plan appears to have two main components: health benefits provided by Lancaster-Mennonite to its employees through a program called the Mennonite Health Services Medical Expense Plan and reimbursement of employees for certain medical expenses not covered by the Mennonite Health Services Medical Expense Plan.

You have not made the Mennonite Health Services Medical Expense Plan, which apparently provides benefits to Lancaster-Mennonite employees as well as to employees of other employers, the subject of your request for an advisory opinion. Also, we note that employer programs of reimbursement of dependent care expenses for employees who may freely choose the day care providers or day care centers utilized under the program may be excluded from ERISA Title I coverage on grounds similar to those mentioned in ERISA Advisory Opinions 88-10A and 91-25A. Accordingly, the opinions expressed in this letter do not apply to the Mennonite Health Services Medical Expense Plan or to dependent care reimbursement programs such as you describe.