



April 20, 1994

Mr. S. Howard Kline  
Buchanan Ingersoll  
600 Grant Street, 58th Floor  
Pittsburgh, Pennsylvania 15219-2887

94-16A  
ERISA SECTION  
3(33),4(b)(2)

Dear Mr. Kline:

This is in reply to your correspondence on behalf of St. Anthony's Hospital (hereinafter, the Hospital) in St. Petersburg, Florida, a medical facility of the Franciscan Sisters of Allegany, New York (hereinafter, the Order). Specifically, you ask whether the Hospital's benefit arrangements 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, a religious congregation of women, was established in 1859 within the Roman Catholic Church (hereinafter, the Church). The Order's ministries include health, education, and pastoral care of the homeless and migrants in the United States and foreign countries. The Order is incorporated and is governed by a general minister, who supervises worldwide activities of the Order, and by a general council consisting of five members of the Order. Members of the Order who serve as its regional ministers supervise the Order's ministries within specified geographical regions. As part of its religious apostolate, the Order provides charitable services, including hospitals. In 1931, to serve its health care apostolate, the Order established St. Anthony's Health Care Center (hereinafter, the Center). The Center is a nonprofit corporation that operates the Hospital. In 1982, the Order also established Allegany Health System, Inc. (hereinafter, the System), a Florida nonprofit, membership corporation. When it established the System, the Order transferred the Center, including the Hospital, to the System.

You represent that the Hospital's benefit arrangements also cover employees of the following three nonprofit corporations: St. Anthony's Ancillary Services, Inc., (hereinafter, the Ancillary Services); St. Anthony's Health Care Foundation, Inc. (hereinafter, the Foundation); and St. Anthony's Professional Buildings and Services, Inc. (hereinafter, SAPBS).<sup>1</sup> You further represent that the Order, through its control of the System and the Center, controls the Hospital and the Ancillary Services, the Foundation, and SAPBS (hereinafter, collectively, the Corporations).

First, you represent that the Order controls the System. The Order's general minister serves ex officio as the System's permanent corporate member, and the general minister appoints the remaining four to eight corporate members of the System. The Order's general minister also serves ex officio on the System's board of directors (hereinafter, the System Board), and the System's corporate members appoint the remaining seven to 18 directors on the System Board. A majority of the System directors, at a minimum, must be members of the Order, and at least two corporate members of the System, in addition to the Order's general minister, must serve as System directors.

Second, you represent that the Order controls the Center through the System because the System, which is controlled by the Order, is sole corporate member of the Center; because the Order's regional minister serves ex officio on the Center's board of trustees (hereinafter, the Center Board); and because the System Board elects the remaining seven to 18 trustees on the Center Board.

Third, you represent that the Order controls the Hospital through the System and the Center because the Center is the sole general member of the Hospital and the System is the sole limited member of the Hospital. Further, the System Board elects the remaining five to nine trustees on the Hospital's board of trustees (hereinafter, the Hospital Board), except for the Hospital's president, who is appointed by the System and serves ex officio as a Hospital trustee. Each candidate for Hospital Board trustee must first obtain the Hospital Board's recommendation to the Center Board and then must obtain the Center Board's recommendation to the System Board prior to his or her election. The System Board may also waive election procedures and, instead, directly select members of the Order to serve on the Hospital Board.

Finally, you represent that the Order, through the System and the Center, effectively controls the Corporations.<sup>2</sup> Bylaws of the Corporations indicate that each of the Corporations is a membership corporation with two corporate members. The Center is the sole general corporate member of each of the Corporations and the System is the sole limited corporate member. Also, System members and the Center Board control the Corporations' respective bylaws and articles of incorporation. In addition, the Center Board recommends to the System Board for election, and the System Board elects, the members of the Corporations' respective boards of trustees, except for the president of each of the Corporations who serves ex officio on his or her respective board of trustees.

The Order, the System, the Center, the Hospital, the Foundation, and the two formerly separate corporations that were recently merged to form SAPBS are listed in The Official Catholic Directory (P.J. Kenedy & Sons) (hereinafter, the Directory).<sup>3</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 System, the Center, the Hospital, the Foundation, and SAPBS.<sup>4</sup> You indicate that the Ancillary Services, although a nonprofit corporation, is not a tax-exempt corporation.

The Hospital's benefit arrangements for its employees and for employees of the Corporations are the subjects of your request for an advisory opinion. Those plans (hereinafter, collectively, the Plans) include the Hospital's Pension Plan and Trust (hereinafter, the Pension Plan), the Hospital's Savings Plan and Trust (hereinafter, the Savings Plan), and the Hospital's Employee Benefit Plan (hereinafter, the Group Health Plan).<sup>5</sup>

You also represent that approximately 1,150 employees actually participate in each of the Plans. The Hospital employs approximately 1,166 employees eligible for participation in the Plans; the Ancillary Services employs 60 eligible employees; and the Foundation and SAPBS each employ eight eligible employees for a total of approximately 1,242 employees who are eligible to participate in each of the Plans.<sup>6</sup>

The Hospital's president appoints one or more employees (hereinafter, collectively, the Committees) to administer the Plans. The sole function of each of the Committees is administration of one or more Plans. Members of the Order sometimes serve on one or more of the Committees.

You submit an undated private letter ruling issued by IRS to the Plans. You state that the Plans received the ruling during the week of April 5, 1993. The private letter ruling states that the Plans are church plans within the meaning of section 414(e) of the Code. You further represent that neither the Pension Plan nor the Savings Plan has made an election pursuant to Code section 410(d) to become subject to Code provisions that include, among others, participation, vesting, and funding requirements 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.

(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 health care ministries it performs. Further- more, the Order is exempt from tax pursuant to 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 because the Order clearly shares common religious bonds and convictions with the Church.

The Church through the Order controls the Center, the System, the Hospital, and the Corporations. First, the Church through the Order controls the System, a civil law corporation, in all the following ways: the Order's general minister serves ex officio as the System's permanent corporate member and appoints any additional System members; the Order's general minister serves ex officio as a permanent director of the System; System members, who are the Order's general minister and her appointees, select the remaining System directors; and, in addition to the Order's general minister, at least two System members who are appointed by the Order's general minister, must serve as System directors. Second, the Church through the Order, and through the Order's control of the System, controls the Center, a civil law corporation, in all the following ways: the System is sole corporate member of the Center; the Order's regional minister serves ex officio as a permanent trustee on the Center Board; and the System Board, consisting of

the Order's general minister and directors appointed by her and by System members, elect the remaining trustees on the Center Board. Third, the Church through the Order, the System, and the Center controls the Hospital, a civil law corporation, in all the following ways: the Center is sole general member of the Hospital; the System is sole limited member of the Hospital; and, except for the Hospital's president, who serves ex officio on the Hospital Board, the System Board, consisting of the Order's general minister and directors whom she and the System members appoint, elects the trustees on the Hospital Board, after the directors receive the recommendation of the Hospital Board and of the Center Board. Finally, the Church through the Order, the System, and the Center controls the Corporations, each of which is a civil law corporation, in all the following ways: the Center is the sole general corporate member of each of the Corporations; the System is the sole limited corporate member of each of the Corporations; System members, whom the Order's general minister appoints, and the Center Board, consisting of the Order's regional minister and trustees whom she and the System members appoint, control the Corporations' bylaws and articles of incorporation; and the Center Board recommends for election and the System Board, consisting of the Order's general minister and directors whom she and the System members appoint, elects the Corporations' respective boards of trustees, except for the president of each of the Corporations, who serves ex officio as a trustee on the board of his or her respective corporation.

In addition, the System, the Center, the Hospital, and the Corporations 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 the Hospital and the Corporations through the Order, the System, and the Center as discussed above; Directory listings applicable to the System, the Center, the Hospital, the Foundation, and the two nonprofit corporations that were merged to form SAPBS; and participation by members of the Order in the System, the Center, the Hospital, and the Corporations in all of the following ways: the Order's general minister permanently serves as a corporate member of, and is a permanent director of, the System, which is the limited corporate member of the Hospital and of its three Corporations; at least a majority of System directors must be members of the Order; the Order's regional minister permanently serves as a trustee of the Center, which is the general corporate member of the Hospital and of its three Corporations; and, if the System Board chooses to waive election procedures, it may directly select the members of the Order who will serve as trustees on the Hospital Board. Also, because of the applicable Directory listings and the corresponding group exemption IRS granted to the Church, the Hospital, SAPBS, and the Foundation are exempt from tax within the meaning of section 501(c)(3) of the Code.<sup>7</sup>

Accordingly, it is the view of the Department of Labor (hereinafter, the Department) that individuals whose employment is with the Hospital, SAPBS, or the Foundation 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 reasons 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 because the Committees' administration of the Plans further assures that the Church is deemed to maintain the Plans. Section 3(33)(C)(i) applies to the Plans because the principal purpose or function of each of the Committees is administration of one or more plans for the provision of employee retirement and welfare benefits and because 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 Hospital's president, whose appointment is controlled by the Church through the Order and the System, appoints the members of the Committees. Furthermore, because the Church's control of the Committees through the Order and the presence of any members of the Order who may serve on one or more of the Committees assure 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.

Finally, we have considered issues raised by the tax status of the Ancillary Services and inclusion of 60 employees of the Ancillary Services in the Plans. It appears that participation in the Plans by the 60 eligible individuals whose employment is with the Ancillary Services, compared with a total of 1,242 individuals you describe as eligible to participate in the Plans, does 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 Hospital's 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 the Hospital's Group Health Plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985.

Sincerely,

ROBERT J. DOYLE  
Director of Regulations  
and Interpretations

<sup>1</sup>Effective June 30, 1993, St. Anthony's Hospital Parking, Inc. and St. Anthony's Professional Services, Inc. were merged to form SAPBS.

<sup>2</sup>Notwithstanding provisions in the Corporations' bylaws that describe additional tiers of subsidiaries, "subsidiary corporations," "affiliated" organizations, "non-wholly controlled" organizations, or other similar entities in which the Corporations may participate, this advisory opinion addresses the "church plan" status of only the benefit arrangements that you have indicated cover exclusively employees of the Hospital and of the Corporations.

<sup>3</sup>St. Anthony's Hospital, Inc. Restated and Consolidated Self-Insurance Fund (hereinafter, the Self-Insurance Fund) is also listed in the Directory as a corporate title used by the Hospital. You state, however, that the Self-Insurance Fund provides workers' compensation benefits, and you indicate that you do not intend your request for an advisory opinion to include the Self-Insurance Fund.

<sup>4</sup>For purposes of this advisory opinion, we assume SAPBS may, upon timely application, obtain a listing in the Directory. Accordingly, we condition this opinion on SAPBS' obtaining its own Directory listing as evidence of tax exempt status pursuant to the group tax exemption that IRS has granted to the Church.

<sup>5</sup>Documents governing the Health Plan indicate that employees of the Hospital, the Center, the Corporations, and the System are eligible to participate therein. The Pension Plan and the Savings Plan, at Article XII, §12.1, and at Article X, §10.1, respectively, provide for adoption of those plans by "any other corporation or entity ... whether an affiliate or subsidiary or not [sic]" upon obtaining consent of the Hospital and the trustee. We reiterate that this advisory opinion addresses the "church plan" status of only those benefit arrangements that you have indicated cover exclusively employees of the Hospital and of the Corporations.

<sup>6</sup>You indicate that prior to the merger that formed SAPBS, St. Anthony's Hospital Parking, Inc. and St. Anthony's Professional Buildings, Inc. had four employees each. For purposes of this advisory opinion, we assume that, as a result of the merger, SAPBS has eight employees.

<sup>7</sup> As noted above, our conclusion is conditioned on SAPBS' obtaining its own Directory listing.

<sup>8</sup> The status of individuals whose employment is with the Ancillary Services is discussed below.