U.S. Department of Labor Pension and Welfare Benefits Administration
Washington DC 20210

May 23, 1994

Ms. Melissa B. Rasman
Dechert Price & Rhoads
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, Pennsylvania 19103-2793

94-18A
ERISA SECTION
3(33),4(b)(2)

Dear Ms. Rasman:

This is in reply to your correspondence on behalf of the Theological Seminary of the Presbyterian Church (U.S.A.) a/k/a Princeton Theological Seminary (hereinafter, the Seminary), an institution of the Presbyterian Church (U.S.A.) (hereinafter, the Church), concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether certain benefit arrangements for the Seminary's employees 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 Seminary is subordinate to the Church, and how the Seminary provides benefit arrangements for its employees.

Within the Church, a local congregation elects the pastors,co-pastors, associate pastors, and elders who govern it. As a group, all pastors and elders of a local Church congregation are termed a "session."

Twelve or more sessions unite in a Church "presbytery." A presbytery consists of ministers and elders elected by all sessions within a defined geographical area, which is known as a "district." A presbytery governs the sessions within its district.

At a higher level of the Church's hierarchy, three or more presbyteries unite in a Church "synod." A synod consists of an equal number of ministers and elders who are elected by the presbyteries within the synod's defined geographical area, which is known as a "region." A synod governs the presbyteries within its region.

The Church's synods form its General Assembly (hereinafter, the General Assembly), which is the Church's highest governing body. The General Assembly meets annually to direct the Church at the national level, and the minutes of its annual meetings (hereinafter, the General Assembly's Minutes) are official Church records.

The General Assembly's powers are derived from the constitutional provisions of the Church as expressed in the Church's Book of Order.[1] Specifically, the General Assembly develops the Church's objectives, issues binding ecclesiastical interpretations, and exercises administrative powers over Church institutions.

In connection with its administrative powers, the General Assembly identifies the Church's theological institutions by listing them in the Church's Book of Order and in the General Assembly's Minutes.[2] Further, in its Minutes, the General Assembly promulgates requirements for operating a theological institution of the Church. The Minutes specify that, among other requirements, theological institutions must (1) report to the General Assembly through the General Assembly's committee on theological education, which is an oversight committee for the Church's theological schools; (2) report changes in their charters or other governing documents to the General Assembly; and (3) present individuals they select for the offices of trustee and president to the General Assembly for its approval. An institution's failure to comply with the General Assembly's rules allows the General Assembly to withdraw the institution from the Church's list of theological institutions.

In the General Assembly's Minutes for 1986 and in the Book of Order, the Seminary is listed as one of the Church's theological institutions. You also represent that the Seminary's purpose, since its founding by the Church in 1812, has been to educate the Church's ministers. In 1822, New Jersey granted the Seminary's charter, and its charter, as amended, characterizes the Seminary as a charitable or educational institution.

You state that the Seminary operates pursuant to bylaws that evidence its adherence to the theology and policies adopted by the Church. Specifically, you represent that the Seminary's bylaws evidence its compliance with the General Assembly's rules for theological institutions. First, the Seminary's bylaws require the Board to submit a written annual report to the General Assembly and require that the Seminary's rules and regulations be consistent with resolutions and orders of the General Assembly. Second, the bylaws mandate a board of 40 trustees (hereinafter, the Board) whose election by their fellow trustees must be endorsed by the General Assembly. The Seminary's bylaws further require that, in selecting the Seminary's trustees, the Board must include at least 18 Church ministers.

In 1990, the Internal Revenue Service (IRS) issued a letter verifying that the Seminary is an organization exempt from tax pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code). In its letter, the IRS stated the Seminary's exemption from tax was originally effective in January 1953.

The Seminary employs individuals to carry out its mission within the Church, and it has established and maintains certain benefit arrangements for its eligible employees. You describe six benefit arrangements for the Seminary's eligible employees (hereinafter, collectively, the Plans): the Princeton Theological Seminary Employees' Pension Plan; the Princeton Theological Seminary Defined Contribution Plan, which you describe as a tax sheltered annuity plan established pursuant to section 403(b) of the Code;[3] the Dental

Plan, which includes two contracts, an insurance contract and a health maintenance organization contract; and three insured welfare benefit plans (i.e., the Medical Plan, the Disability Plan, and the Life Insurance Plan).

You also represent that the Board by resolution of October 14, 1991, established the Seminary's Benefits Committee (hereinafter, the Committee). The Committee consists of appointees of the Board who are subject to the Board's oversight, supervision, and approval. You further represent that the Committee's sole function is administration of the Plans.

In addition, you submitted a private letter ruling concerning the Plans issued by IRS to the Seminary on March 11, 1993. The private letter ruling states that the Plans 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.
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> (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 Church is a "church" or "a convention or association of churches" within the meaning of section 3(33). It also appears that the Church through its General Assembly controls the operation of the Seminary, which is a civil law corporation, in all the following ways: the General Assembly endorses the election of trustees to the Board of the Seminary; the General Assembly requires and receives reports from the Seminary; and the Seminary operates according to bylaws that provide for Seminary rules and regulations consistent with the General Assembly's resolutions and orders. The Seminary is also exempt from tax pursuant to section 501(c)(3) of the Code.

Furthermore, because they assure that the Seminary adheres to the tenets and teachings of the Church, the following factors evidence that the Seminary shares common religious bonds and convictions with the Church: the Church's control of the Seminary (as described above), the presence of Church ministers as trustees on the Board of the Seminary, and the Seminary's listing in the Book of Order and in the General Assembly's Minutes. Consequently, the Seminary 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 the Seminary are considered employees of an organization that is a civil law corporation and 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) of Title I of ERISA, the Church is also deemed to maintain the Plans because the Committee, whose sole purpose is administration of the Plans, is controlled by and "associated with" the Church and thus meets the requirement of section 3(33)(C)(i). The Church controls the Committee through the General Assembly and the Seminary because the Board, which is controlled by the General Assembly (as described above), appoints the members of the Committee and oversees, supervises, and must approve the activities of the Committee. Further, because Church control of the Committee assures that the Committee adheres to the tenets and teachings of the Church, it evidences that the Committee shares common religious bonds and convictions with the Church. Consequently, the Committee 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 one or more 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

[1] The Church's Book of Order describes the Church's form of government and contains its rules of discipline and directory for worship. Other materials in the Book of Order include articles of agreement that constitute the contractual commitments for reunion of the Presbyterian Church in the United States and the United Presbyterian Church in the United States of America.

[2] The lists are virtually identical; any variations do not appear relevant to the opinion expressed in this letter.

[3] You specify that only certain of the Seminary's office employees and its grounds and buildings staff are eligible to participate in the Princeton Theological Seminary Employees' Pension Plan. Further, as to the Princeton Theological Seminary Defined Contribution Plan, eligible employees include only those faculty and administrative staff who do not elect to participate in a separate benefit arrangement that the General Assembly maintains for employees of its associated organizations (hereinafter, the Church Benefit Plan). Inasmuch as you have not made the Church Benefit Plan the subject of your request for an advisory opinion, the opinions expressed in this letter do not apply to the Church Benefit Plan.