

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington DC 20210



November 10, 1994

Mr. Patrick J. Foley
Foley & Foley
595 Market Street, Suite 1350
San Francisco, California 94105

94-36A
ERISA SECTION
3(33),4(b)(2)

Dear Mr. Foley:

This is in reply to your correspondence on behalf of St. Anne's Maternity Home (hereinafter, the Home) in Los Angeles, California, an institution of the Congregation of the Franciscan Sisters of the Sacred Heart (hereinafter, the Order),¹ concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion concerning whether the Home's employee pension plan (hereinafter, the Retirement Plan) is a church plan within the meaning of section 3(33) of Title I of ERISA.

Your correspondence and the accompanying documents contain the following facts and representations. The Order is a religious congregation of women established according to the tenets of canon law of the Roman Catholic Church (hereinafter, the Church). The Order is governed by its general superior and its councilors, all of whom are members of the Order. The councilors are elected by the Order's members, and they are assisted in governing the Order by its general secretary and its general treasurer, both of whom are also members of the Order.

One of the Order's main activities to further its mission within the Church is operating health care and social welfare facilities. You further represent that the Home is a social welfare facility that has been operated by the Order since 1941 and that provides care for single mothers and pregnant women.

You represent that the Order organized the Home as a California nonprofit membership corporation and that it operates according to articles of incorporation and bylaws that provide for a corporate membership and a board of directors (hereinafter, the Home Board) under the control of the Order. The Home's corporate members are the Order's general superior, its councilors, its general secretary, and its treasurers. Only the corporate members may amend or repeal the Home's articles of incorporation and bylaws, may decide the number of directors on the Home Board, and may appoint directors to the Home Board, subject only to the requirement that five members of the Order must be among those directors.² Also, the Home's assets on dissolution will ordinarily be distributed to the Order.³

The Order and the Home are listed in The Official Catholic Directory (P.J. Kenedy & Sons, 1992) (hereinafter, the Directory). 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 and the Home.

The Home has employees, and it has established and maintained the Retirement Plan for its eligible employees. The Retirement Plan, which was amended and restated effective July 1, 1989, is a defined benefit pension plan. It is administered by an Administrative Committee (hereinafter, the Committee) whose sole function is the Retirement Plan's administration. That Committee consists of three or more members appointed by the Home Board, which (as described above) is controlled by the Order. You represent that two members of the Order, one of whom is the chairman of the Home Board, serve on the Committee.

Your submission includes a private letter ruling that IRS issued to the Retirement Plan on July 15, 1993, concluding that the Retirement Plan is a church plan within the meaning of Code section 414(e). Further, it appears that, although the Retirement Plan has obtained verification from the IRS concerning its qualified status pursuant to section 401 (a) of the Code, there has been no election made under section 410(d) on behalf of the Retirement Plan to be covered by Title II of ERISA.⁴

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 subparagraph (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 of churches

It appears that the Order is an integral part of the Church by virtue of the health care and social welfare ministries it performs. Further, the Order, which is a civil law corporation, 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 Home, which is a civil law corporation, because members of the Order's governing body (i.e., the Order's general superior and councillors), the Order's general secretary, and its general treasurer control the Home in the following ways: they serve as the Home's corporate members; they appoint the directors on the Home Board, at least five of whom must be members of the Order; and they control the power to amend or repeal the articles of incorporation and bylaws under which the Home operates, including any modification of those documents that changes the number of directors on the Home Board. It also appears that the Church's control of the Home through the Order is evidenced by provisions of the Home's articles of incorporation and bylaws requiring that its assets on dissolution will ordinarily be distributed to the Order.

In addition, the Home is "associated with" the Church, within the meaning of section 3(33)(C)(iv) because of factors that assure that the Home adheres to the tenets and teachings of the Church and thus evidence that it shares common religious bonds and convictions with the Church, including that the Church controls the Home through the Order; that members of the Order comprise the sole corporate membership of the Home; that members of the Order serve as directors on the Home Board; and that the Directory contains a listing applicable to the Home. Also, because of the applicable Directory listing and the corresponding group exemption that IRS granted to the Church, the Home is exempt from tax within the meaning of section 501(c)(3) of the Code.

Accordingly, it is the view of the Department of Labor (the Department) that individuals whose employment is with the Home are employees of an organization that is a civil law corporation and that is 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); and the Church, as employer, is deemed to have established and to maintain the Retirement Plan that is the subject of this opinion.

In addition to the above reasons for concluding that the Retirement Plan meets the church plan definition in section (33), it may be considered a church plan by operation of section 3(33)(C)(i) of Title I of ERISA because its administration by the Committee further assures that the Church is deemed to maintain the Retirement Plan. The principal purpose or function of the Committee is administration of the Retirement Plan for the provision of employee retirement benefits. It appears that the Committee is controlled by the Church through the Order because the Committee's members are appointed by the Home Board, which (as discussed above) is controlled by the Church through the Order. Further, because the Church's control of the Committee through the Order and the presence of two members of the Order on the Committee assure that the Committee adheres to the tenets and teachings of the Church, they evidence 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).

For the above reasons and based on your representations, it is the opinion of the Department that the Retirement Plan constitutes a church plan within the meaning of section 3(33)(A) of Title I of ERISA by operation of sections 3(33)(C)(iii). In addition, ERISA section 3(33)(C)(i) of Title I of ERISA appears to describe the Retirement Plan. 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 Retirement 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.

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.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations

¹ In California, one of two states in which the Order has been organized as a nonprofit corporation, the Order uses the name "The Franciscan Sisters of the Sacred Heart in California."

² You represent that from 11 to 21 directors may serve on the Home Board and that some corporate members of the Home as well as the Order's general superior may periodically serve as directors on the Home Board.

³ Alternatively, the Home's assets may be distributed to St. Francis Hospital of Santa Barbara, which is another nonprofit institution of the Order, or to the Archbishop of Los Angeles, who is a corporation sole and, as the Church's highest ranking clergyman in the geographical division of the Church in which the Home is located, embodies Church authority.

⁴ Section 4(b)(2) of ERISA excludes from Title I coverage church plans as defined in section 3(33) of Title I of ERISA, excepting only those plans that have made the Code section 410(d) election.