

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



December 7, 1995

95-30A
ERISA SECTION 3(33), 4(b)(2)

Mr. John C. Korloch
CW Walker Benefits
118 South Center Street
P.O. Box 709
Grove City, Pennsylvania 16127-9984

Dear Mr. Korloch:

This is in reply to your correspondence on behalf of Allegheny Lutheran Social Ministries, Inc. (ALSMI), which is located in Hollidaysburg, Pennsylvania, and is an institution of the Evangelical Lutheran Church in America (hereinafter, the Church). Specifically, you ask whether pension benefit arrangements for ALSMI's 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 about the Church's organization, ALSMI's subordination to the Church, and the pension benefit arrangements that ALSMI provides for its employees.

The Church is composed of local Church congregations that are formed into synods. One of the Church's synods is the Allegheny Synod of the Church (hereinafter, the Synod). The Synod is listed in the Church's Yearbook, which is the official listing of Church organizations, and serves local Church congregations in central Pennsylvania. You further describe the Synod as headed by a bishop.

According to the Synod's bylaws, the Synod groups its local Church congregations into conferences and has an annual assembly (i.e., the Synod Assembly) consisting of representatives who are elected from within the Synod by its local Church congregations or groups thereof. Among the Synod Assembly's other responsibilities is election of the Synod Council. The Synod Council meets quarterly and serves as the Synod's board of directors. Except for certain Synod Council members who are ordained ministers (as specified in Synod bylaws), the members of the Synod Council must meet requirements of the Synod's bylaws as to membership in local Church congregations within the Synod.

You represent that ALSMI is a nonprofit corporation under Pennsylvania law that provides professional social services, social service programs, and social services facilities in its local area. Among its other endeavors, ALSMI operates counseling services, child care services, and adult day activity programs.

You further represent that ALSMI is subordinate to the Synod. First, you indicate that ALSMI's constitution and articles of incorporation are subject to the Synod's approval. Second, you represent that, in accordance with those documents, the Synod Council elects directors to fill any vacancies on ALSMI's board of directors (hereinafter, the ALSMI Board). Moreover, the bishop of the Synod serves ex officio as a director on the ALSMI Board; one director from each conference of the Synod must be included among the directors on the ALSMI Board; and all directors on the ALSMI Board must meet requirements of ALSMI's bylaws as to membership in Church congregations. Directors on the ALSMI Board include, as of the date of your submission, three ministers within the Synod and the Synod's bishop.

ALSMI and its facilities are listed in the Synodical Directory, Evangelical Lutheran Church in America that was published in 1994. Further, you represent that ALSMI participates in the group exemption from tax that you describe as granted to the Church by the Internal Revenue Service (hereinafter, IRS) pursuant to section 501(c)(3) of the Internal Revenue Code (hereinafter, the Code).

ALSMI employs individuals to carry out its mission within the Church and provides pension benefit arrangements for its eligible employees. Its pension benefit arrangements for employees (hereinafter, collectively, the Plans) consist of two separate arrangements: a money purchase plan, which it operates pursuant to its adoption of a prototype defined contribution arrangement and trust that Carbis Walker & Associates offers, and a thrift savings arrangement.

You also submitted a copy of the May 15, 1995, resolution of the ALSMI Board appointing a committee (hereinafter, the Committee) to administer the Plans. The resolution states that there are four members on the Committee, including the chairperson of the ALSMI Board, all of whom serve at the pleasure of the ALSMI Board. According to that resolution, the Committee's sole function is administration and funding of the Plans to provide retirement benefits for ALSMI employees.

You submitted a private letter ruling that IRS issued to ALSMI on March 22, 1995. In that private letter ruling, IRS concludes, on condition that ALSMI establish the appropriate committee to administer the Plans, that the Plans are church plans within the meaning of section 414(e) of the Code. We also note that the Board's resolution (as described above) attempts to comply with that condition imposed by IRS in its private letter ruling. Nothing in your submission indicates that either of the Plans has made any election pursuant to Code section 410(d).

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.¹

It appears that either the Church or the Synod, or both, may constitute one or more "churches" or "conventions or associations of churches" within the meaning of section 3(33). Further, the Church through the Synod controls ALSMI, a civil law corporation, because ALSMI's constitution and its articles of incorporation are subject to the Synod's approval and because, in accordance with those documents, the Synod Council, which is the Synod's governing body, elects all directors to the ALSMI Board. In addition, ALSMI is exempt from tax pursuant to section 501(c)(3) of the Code.

Further, because they assure that ALSMI adheres to the tenets and teachings of the Church, the following factors evidence that ALSMI shares common religious bonds and convictions with the Church: the Synod controls ALSMI (as described above); three ministers within the Synod and the Synod's bishop serve as directors on the ALSMI Board; and ALSMI is listed in the Church's synodical directory. Consequently, ALSMI 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 that individuals whose employment is with ALSMI are 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 deemed the employer of those individuals for purposes of the

¹ Section 4(b)(2) creates an exception to the church plan exclusion for only those (pension) plans that have made the Code section 410(d) election. You have not indicated in your submission that the Plans have made, or intend to make, any Code section 410(d) election(s).

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), they may be considered church plans because of the Committee's administration of the Plans. The Church controls the Committee because the ALSMI Board, which (as described above) is controlled by the Church through the Synod Council, appoints the members of the Committee. The Church's control of the Committee, through the Synod Council and the ALSMI Board, also assures the Committee's adherence to the tenets and teachings of the Church and thus 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). Because the Committee's principal purpose or function appears to be administration of the Plans for the provision of employee pension benefits and because the Committee is both controlled by and "associated with" the Church within the meaning of section 3(33)(C)(iv) of Title I of ERISA, the Committee's administration of the Plans, by operation of section 3(33)(C)(i) of Title I of ERISA, also assures that the Church is deemed to maintain the Plans.

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.

Sincerely,

ROBERT J. DOYLE

Director of Regulations and Interpretations