U.S. Department of Labor

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

February 7, 1997

97-04A
ERISA SEC. 3(33)

Ms. Anne E. Moran
Miller & Chevalier
655 Fifteenth Street, N.W.
Suite 900
Washington, D.C. 20005-5701

Dear Ms. Moran:

This responds to your correspondence on behalf of the St. Margaret Mercy Healthcare Centers, Inc. (SMMHC) in Mishawaka, Indiana. Specifically, you request an advisory opinion concerning applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the SMMHC Medical and Dental Plan for Employees (the Health Plan) and the SMMHC Amended Employees Retirement Plan (the Retirement Plan). You request an opinion concerning whether the Health Plan and the Retirement Plan (collectively, the Plans) are "church plans," as defined in section 3(33) of Title I of ERISA, and therefore excluded from ERISA Title I coverage by ERISA section 4(b)(2).

Your submission contained extensive documentation of the facts on which your request is based, including copies of private letter rulings recently issued by the Internal Revenue Service (IRS) to the Plans. In those rulings, IRS concluded, as requested by you on behalf of the Plans, that they are each "church plans" within the meaning of section 414(e) of the Internal Revenue Code (the Code). We note that the Plans are sponsored and maintained for participating employees by Sisters of St. Francis Health Services, Inc. (Health Services), whose sole corporate members are the Roman Catholic religious congregation incorporated as Sisters of St. Francis of the Perpetual Adoration, Inc. (Sisters, Inc.) and Sisters of Mercy Health Corporation. Health Services supervises, on behalf of the Roman Catholic Church and Sisters, Inc., the following entities: SMMHC's operation of hospitals formerly known as St. Margaret Hospital, Hammond, Indiana, and Our Lady of Mercy Hospital, Dyer, Indiana, and Alverno Administrative Services, Inc. (Alverno), which, as a subsidiary of Health Services, exclusively serves Health Services' hospitals. Only employees of SMMHC participate in the Retirement Plan, but Health Plan participants include employees of SMMHC and certain employees of Health Services and Alverno.

As you know, the "church plan" definition in Code section 414(e) is virtually identical to the definition of that term in section 3(33) of Title I of ERISA. Insofar as your representations indicate that Health Services, SMMHC and the Plans are operated and structured as described in the rulings referred to above, excepting that fewer employees of SMMHC now engage in unrelated trades or businesses so as to constitute a percentage of total participants even less substantial than indicated in the Plans' rulings, we do not disagree with the analysis and conclusion reached by IRS in its rulings.

Accordingly, to the extent that the Plans and SMMHC currently operate in substantially the same manner described to IRS for the purpose of obtaining the Plans' rulings, we conclude that the Plans meet the church plan definition in section 3(33) of Title I of ERISA. Provided that, as you represent, the Retirement Plan, which is the only Plan that appears entitled to make an election pursuant to Code section 410(d), has made no such election, ERISA section 4(b)(2) excludes that Plan from coverage under Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Susan G. Lahne
Chief, Division of Coverage
Office of Regulations and Interpretations