

U.S. Department of Labor

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



April 4, 1997

97-10A
ERISA SEC. 3(33)

Mr. Edward J. Adkins
Miles & Stockbridge
10 Light Street
Baltimore, MD 21202-1487

Dear Mr. Adkins:

This responds to your correspondence on behalf of Homewood Retirement Centers of the United Church of Christ, Inc. ("Homewood") requesting an advisory opinion concerning the applicability of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Specifically, you request an opinion as to whether the Homewood Retirement Centers of the United Church of Christ, Inc. Employees Pension Plan and the Homewood Retirement Centers Group Health Plan (collectively the "Plans") are church plans within the meaning of section 3(33) of Title I of ERISA.

You submitted to the Department of Labor documentation about each Plan, including a private letter ruling recently issued by the Internal Revenue Service ("IRS") to the Plans. In that private letter ruling the IRS concluded, based on representations provided by the Plans, that the Plans constituted church plans within the meaning of section 414(e) of the Internal Revenue Code ("Code"). As you know, section 414(e) of the Code defines the term "church plan" using language that is virtually identical to ERISA section 3(33).

To the extent that Homewood and each Plan are currently operated in substantially the same manner as was described to the IRS for purposes of obtaining a private letter ruling, we conclude that the Plans meet the church plan definition in section 3(33) of Title I of ERISA.¹ Provided that, as you represent, neither of the Plans, if entitled to do so, has made an election pursuant to Code section 410(d), ERISA section 4(b)(2) therefore excludes the Plans 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 that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

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

¹ You may not rely on this conclusion to the extent that, as you represent is a possibility, either of the Plans extends coverage to employees of one or more companies that become affiliated with Homewood subsequent to your opinion request.