



WHD-OL-1970-0075

PD

November 10, 1970

27 CC 319
27 CC 103
27 CC 401

NAME*

This is in reply to your letter of June 17, 1970, asking whether certain transportation costs would be a part of wages under section 3(m) of the Fair Labor Standards Act.

As explained in section 531.32(c) of Regulations, Part 531, the cost of furnishing facilities which are primarily for the benefit and convenience of the employer will not be recognized as reasonable and may not, therefore, be included in computing wages under section 3(m). We have consistently regarded the cost of transporting employees to and from the point of hire as a cost to be borne by the employer, and not the employees, is a cost incidental to the employer's recruitment program. Such transportation cost would not properly be considered as a part of the individual employee's wages under section 3(m) for either the employees you refer to as "direct employees" or "indirect employees". Similarly, the cost of transporting the "indirect employees", who are used to support "direct employees", would not be considered a cost item in determining the reasonable cost of providing the direct employees' food, lodging and other facilities as it is a cost incidental to the recruitment of the indirect employees.

We may point out that pursuant to Government contracts of the type you mention, the contracting agency usually reimburses the employer for transportation costs to and from the employees' point of hire. Where there is such reimbursement, the transportation charges are excluded in computing wages, and are not considered part of the cost of furnishing board, lodging or other facilities to the employees.

As stated in sections 541.36 and 531.37 of Part 531, withholding of monies from employees against the transportation costs described in your letter could not legally be made to the extent that they reduce the wages of the employees below the minimum wage required under either the Fair Labor Standards Act or the Service Contract Act. Such deductions are also illegal to the

extent that they reduce the amount of overtime compensation below that required under either the Fair Labor Standards Act or the Contract Work Hours Standards.

Section 531.32(a) which you quote is limited to ordinary home to work travel which is not hours worked and which is not necessary to or an incident of employment. Ordinary home to work travel refers to an employee's travel from home before his regular workday and return to home at the end of the workday.

Sincerely,

Robert D. Moran
Administrator

Enclosures

WH-92

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).