

## FLSA-645

February 4, 1971

This is in reply to your letter of December 9, 1970, regarding working students. You state that your basic problem is to keep the costs to your lower middle socio-economic class of students as low as possible while including the organization's deficit funding of your schools as part of the minimum wage paid to students for such work as dishwashing, custodial housekeeping, and lawn work. You propose several possible solutions and ask our opinion regarding the compliance status under the Fair Labor Standards Act with respect to each suggested solution.

Your first suggested solution is as follows:

I. The Department of Labor consider the church contributions - both subsidies and appropriations as contributions to the education of the students in that they reduce the costs of the education provided.

II. That the amount of the contributions by the church be computed as a per hour payment to the student and this amount plus the cash paid per hour total the minimum wage as prescribed by the law.

In accordance with section 3(m) of the Act, the reasonable cost of board, lodging and other facilities furnished to students may be included in determining the wages paid to such employees. This includes educational costs defrayed for student employees. Educational costs defrayed for student employees are those portions of tuition payments that are absorbed by the school through such means as reduced tuition. Thus, a reduction in the regular tuition charge to student workers, or a grant which is credited to the student's account, would be considered a facility under section 3(m).

The excess of costs of operating the school over the charges that are made to all students cannot be considered facilities under section 3(m), particularly where only some of the students are employed. Consequently, your first suggested solution would result in noncompliance with the wage provisions of the Act.

Your second suggested solution is as follows:

I. Raise all student charges to balance the operating budget without considering the operating and equipment subsidies provided by the church organization.

II. The funds contributed by the church for operating and equipment presently would be re-assigned by the church as solely for working students scholarships.

III. All working students would be paid the minimum wage according to the Act.

We are not concerned with the sources of student scholarship funds. So long as the minimum wage and time and one half that rate for any overtime hours are paid, the wage provisions of the Act are satisfied.

Your third suggested solution is as follows:

I. Charge all students the same tuition.

II. Charge all students working for the school at non- interstate industries the added tuition for an added subject, namely Work-Experience or as it is sometimes called in the curriculum, Distributive Education. Credit with grades would be entered in transcripts.

III. All students working on campus would be paid the minimum wage according to the Act.

We are not sure of our understanding of this solution. In this connection, section 3(s) of the Act includes, among other covered enterprises, elementary and secondary schools and institutions of higher education. All working students, whether or not directly engaged in work of an interstate or non-interstate character, must therefore be paid not less than \$1.60 per hour, or certificated rates based on this rate, effective February 1, 1971.

Your fourth suggested proposal is as follows:

I. Publish in all advertising and bulletins the charge for attendance at the school is so much cash and so much required work - such as an average of three hours work per school day.

II. Students working beyond the advertised required hours of work would be paid the minimum wage according to the Act.

Our understanding of these proposals may be illustrated as follows: Assume the regular tuition and fees for all students is \$1,500 per school year. The tuition and fee might be \$1,100 cash plus 250 hours of work at \$1.60 per hour or a total work credit of \$400. Students who work less than 250 hours or who do not work at all would pay proportionately more than the \$1,100 cash charged students who work at least 250 hours. For the hours beyond 250, the student worker would be paid \$1.60 per hour. All hours of work in excess of 40 in a week would be paid for (or credited) at not less than time and one half the rate. if this illustration reflects the intent of the proposal, the proposal would satisfy the wage requirements of the Act.

Your last suggested proposal is as follows:

I. Increase the charges to all our students sufficient to cover the additional costs of paying the minimum wage - which you estimate in the present economy will amount to 20 - 30% increase in costs across the board depending on the school.

It is understood that under this proposal working students would be paid in accordance with the minimum wage and overtime requirements of the Act. Accordingly, this would satisfy the monetary provisions of the Act.

Sincerely,

Robert D, Moran  
Administrator