



WHD-OL-1971-0008

*** FLSA-484 ***

April 9, 1971

This is in further reply to your letter of February 18, 1971, concerning the application of the Fair Labor Standards Act to the souvenir selling business and proposed bus tour operations of a client of your firm.

Your client is engaged in operating a souvenir stand on a Civil War battlefield. He sells souvenirs, maps, refreshments, books, and other merchandise to tourists who visit the battlefield. The business is presently considered to be within the retail or service establishment exemption from the Act's minimum wage and overtime pay provisions as the firm's sales do not exceed \$250,000 a year. He is proposing to expand his business by building a terminal to house his souvenir operations and to act as a terminal for a bus tour service. The tour service will be supervised by the National Park Service, although your client does not have a contract with the Service.

It is our opinion that the terminal with all its facilities including the bus tour service is typical of establishments open to and frequented by the general public for amusement and recreational purposes. It would qualify for the exemption contained in section 13(a)(3)(B) of the Act as an establishment which is an amusement or recreational establishment if its average receipts for any six months of the preceding calendar year are not more than 33 1/3% of its average receipts for the other six months of the calendar year.

This opinion is of course predicated on the information contained in your letter. If for any reason the operations of you client may change in any manner this may alter the exemption status of his business.

Sincerely,

Robert D. Moran
Administrator