

FLSA-807

October 4, 1974

We regret the delay in replying to your letter of August 6, 1974, concerning the application of section 13(a)(3) of the Fair Labor Standards Act to the operations of a municipal recreation department.

Section 13(a)(3) of the Act provides a complete exemption from both the Act's minimum wage and overtime pay requirements for seasonally operated amusement or recreational establishments. An establishment to which the general public has recourse for entertainment, amusement, recreation or sporting activities and which is (1) not open for more than seven months in a year or (2) which during the preceding calendar year its average receipts for any six months were not more than 33 1/3 percent of its average receipts for the other six months of that year will qualify for this exemption. Recreational areas are among the types of establishments which may qualify for this exemption. A recreational area is one which occupies a defined area such as a park and may consist of tennis courts, swimming facilities, golf courses, ice skating rings, hockey fields, football fields, or similar facilities, or it may consist of any one of such facilities or combination thereof.

A municipal recreational area that is funded through city or state taxes would not qualify for exemption on the basis of the receipts test discussed above as such funds are not "receipts" of the type required by the exemption. This would be true even if a nominal fee was charged for the use of the recreational areas. Such a recreational area in order to qualify for the exemption would have to meet the test described above in (1) requiring that the establishment be not open for more than seven months in a calendar year.

A park that is used for more than seven months for a variety of organized amusement or recreational activities would not be exempt. Maintenance crews who work solely at an exempt location would be included in the exemption. However, the exemption would not apply to maintenance crews who work out of central location to clean all a city's parks, even if all the parks qualified for exemption under section 13(a)(3) of the Act. Part-time or temporary employees engaged in recreational activities would be exempt from the Act's minimum wage and overtime pay provisions if the recreational area where they are employed qualifies for exemption under section 13(a)(3) of the Act, as a bona fide seasonally operated amusement or recreational establishment.

If you desire a specific determination with regard to the application of this exemption to any seasonally operated amusement or recreational facilities managed by your municipality, it is suggested that you get in touch with our Area Office at 2222 West 95th Street, Chicago, Illinois 60643, Telephone: 312-238-8832. That office is in a better position to ascertain all the necessary facts, and will be pleased to offer every possible assistance.

Sincerely,

Betty Southard Murphy
Administrator