

FLSA-557

October 16, 1974

We regret the delay in responding to your letter of April 26, 1974, concerning the application of the Fair Labor Standards Act, as amended effective May 1, 1974, to employees of the Young Men's Christian Association of Greater ***.

The Fair Labor Standards Act, the Federal law of most general application concerning wages and hours of work, applies to employees individually engaged in or producing goods for interstate commerce and to employees in certain enterprises. Please note, that there is no exclusion in the Act for private nonprofit organizations as such. Employees of a YMCA are individually covered under the Act if in the performance of their duties they are engaged in interstate commerce or in the production of goods for interstate commerce. Such employees include those who regularly handle interstate mail and telephone calls, or receive merchandise from out-of-State sources. Individually covered employees must be paid a minimum wage of not less than \$2.00 an hour effective May 1, 1974; \$2.10 an hour, beginning January 1, 1975; and \$2.30 an hour, beginning January 1, 1976; and overtime premium pay for all hours worked in excess of 40 in a workweek, unless specifically exempt.

Other employees of a YMCA may be covered under the Act on an enterprise basis if the enterprise has some employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce, and if the organization has an annual gross volume of sales made or business done of at least \$250,000, exclusive of certain excise taxes. In large urban areas branch facilities of a YMCA which are operated by the central establishment are included in the enterprise. Employees of such an enterprise are entitled to a minimum wage of at least \$1.90 an hour effective May 1, 1974; \$2.00 an hour effective January 1, 1975; \$2.20 an hour effective January 1, 1976; and \$2.30 an hour effective January 1, 1977; and overtime premium pay after 40 hours worked in a workweek, unless otherwise exempt. If the enterprise has a volume of business income in excess of \$1,000,000 a year the minimum wage for individually covered employees must be met.

The educational, eleemosynary, religious, and similar activities of an organization operated not for profit are not included as part of the covered enterprise, although employees engaged in such activities may be covered on an individual basis and subject to the Act's monetary provisions if they are individually engaged in or producing goods for interstate commerce, as discussed above.

Contributions for and receipts from such educational, eleemosynary, or religious activities are not included in the annual gross volume of the enterprise, as such receipts do not come within the phrase "business done" added to the definition of "enterprise engaged in commerce or in the production goods for commerce." Excise taxes at the retail level which are separately stated are also excluded from the annual gross volume.

However, recreational facilities (such as a swimming pool or gymnasium) are covered if the enterprise is covered. Income from such facilities is included in the computation of the annual dollar volume of business.

An establishment operated by a private membership organization engaged in serving its members and their guests is not a retail or service establishment within the meaning of the Act. Therefore, the exemptions provided in the Act that are applicable only to employees of retail or service establishments are not available to employees of such an establishment. These provisions include the complete minimum wage and overtime pay exemption provided in section 13(a)(2) for employees of certain small retail and service establishments, the partial overtime pay exemption provided by section 13(b)(18) for food service employees in a covered retail or service establishment, and the special provision for the employment of full time students in retail and service establishments at subminimum rates provided by section 14 of the Act.

Certain activities on the premises utilized by a membership association may be operated under such conditions as to constitute a separate place of business. For example, a cafeteria may be physically and functionally separate so that it would thus meet the requisites for a separate establishment on the same premises with the other activities of the enterprise. Such a separate cafeteria establishment, if open to the general public, would be within the retail concept, and if it satisfies the requirements for a bona fide retail or service establishment contained in section 13(a)(2) of the Act, the exemptions listed in the above paragraph would be applicable under the conditions specified in those sections of the Act.

In addition, section 13(b)(8) of the Act provides a partial overtime pay exemption for certain employees of motels, hotels, and restaurants, which may be applicable to an establishment which is open to the public if those people who utilize the named facilities are mainly transients.

Also, a summer day camp operated as a separate establishment, for example, may qualify for the complete minimum wage and overtime pay exemption provided in section 13(a)(3) of the Act for certain amusement or recreational establishments which (1) are not open more than 7 months in a year or (2) their average receipts during any six months of the preceding calendar year did not exceed one third of their receipts for the other six months.

If you have any further questions concerning the application of the Fair Labor Standards Act, it is suggested that you get in touch with our Area Office at Room 3014, Federal Building, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: 918-581-7695. 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
Wage and Hour Division