

## FLSA-102

August 13, 1975

This is in reply to your letter of July 29, 1975, concerning the application of the provisions of the Fair Labor Standards Act to the local churches.

This Act applies to employees individually engaged in or producing goods for interstate commerce and to employees of certain enterprises so engaged. In this regard, and as you indicate, there is no exclusion in the Act for private tax exempt or nonprofit organizations as such.

Church employees would be individually covered under the Act where they regularly and recurrently use the telephone, telegraph or mails for interstate communications or where they receive, prepare or send material across State lines. The Wage and Hour Division would not, however, assert such individual coverage for office or clerical employees of a church who only occasionally or sporadically devote negligible amounts of time to such interstate transactions. Church custodians, unless engaged in the above activities or in regularly cleaning church offices where goods (including printed and written materials) are regularly prepared for shipment across State lines, would not be individually covered under the law. The use of supplies, which may have moved in interstate commerce, by church custodians would not, of itself, be a basis for establishing individual coverage.

Whether or not enterprise coverage would obtain with respect to the operations of a religious nonprofit organization, such as the \*\*\*, would be dependent upon several factors. Generally speaking, enterprise coverage is not applicable to employees engaged exclusively in the operation of a church since their activities are not performed for a "business purpose" within the meaning of section 3(r) of the Act. However, where the nonprofit religious organization employs such employees in connection with the operation of the type of institutions set out in sections 3(r)(1) and 3(s)(4) of the law (hospitals, schools [including day care centers], institutions of higher education, or residential care establishments), they will be covered on an enterprise basis, since such activities have, by statute [Section 3(r)], been declared to be performed for a "business purpose". These matters are discussed in the enclosed publications nos. 1317, 1326, 1328, 1332 and 1364. Additionally, activities of religious organizations may be performed for a "business purpose" where, for example, they engage in ordinary commercial activities such as operating a printing and publishing plant. In such a case, the business activities are treated the same as when performed by the ordinary business enterprise. In this regard please refer to the case of *Mitchell v. Pilgrim Holiness Church Corp.* (210 F 2d 879 (CA-7); cert. den. 347 U.S. 1013).

It should be noted that the provisions of the law as discussed above apply only where a bona fide employment relationship exists. In this regard, it is the Division's position that individuals who volunteer their services, usually on a part time basis, to a religious or educational nonprofit organization not as employees or in contemplation of pay are not

considered employees within the meaning of the Act. This is discussed further in the enclosed WH Publication 1297.

As to the effect of any State laws, section 18(a) of the Fair Labor Standards Act states in effect that where a State law establishes higher standards than those of a Federal statute, the employer is obliged to comply with the higher standards. Of course, lower State standards would not excuse compliance with higher standards provided by Federal statute.

We trust that the above information is of assistance to your office. Should you have further specific questions it is suggested that you contact our Area Office located in \*\*\*. That office will be pleased to be of all possible assistance.

Sincerely,

Warren D. Landis  
Acting Administrator

Enclosures