

## FLSA-1038

December 16, 1981

This is in reply to your letter of November 19, 1981, addressed to the Assistant Administrator Herbert J. Cohen, concerning the issue of whether certain employment of minors comes within the exemption of Section 13(d) of the Fair Labor Standards Act (FLSA) when they engage in the solicitation of newspaper subscriptions under the circumstances outlined in your letter. As you know, this section of the law exempts from its minimum wage, overtime, and child labor provisions any employee "engaged in the delivery of newspapers to the consumer".

It is our position that the solicitation of subscriptions would be exempt work under Section 13(d) of the Act provided that the delivery employees (newspaper carriers) of the newspaper publisher or the contract distributor perform this activity as part of their own newspaper work, i.e., the soliciting carrier is also to be the delivering carrier. Under these circumstances, the solicitation work can reasonably be regarded as the sale of newspapers relative to the carrier's own delivery work, and exempt. (Whether the newspaper is sold or given to a prospective customer gratis does not alter this position.) However, the solicitation of newspaper subscriptions for delivery by a person other than the soliciting employee, such as would appear to be involved in your campaigns for new subscribers for your client newspapers, would not be exempt under Section 13(d). This is so because the solicitation of newspaper subscriptions for delivery by other persons would not be regarded as work relating to the carrier's own delivery of newspapers to the consumer. In the subject instance, the minors are engaged solely in the solicitation of new subscriptions.

As non-exempt employees, the minors are therefore, subject to the child labor, minimum wage, overtime provisions of the Act. Minors under the age of 14 may not be employed in covered nonexempt employment; 14 and 15-year-olds are restricted to the hours and time standards set forth in Child Labor Regulation 3.

Recent proposals to amend the FLSA to permit delivery of shopping news and other advertising circulars, which do not currently fall within the definition of a newspaper under the Act, were defeated in Congress. While the distribution of shopping guides is not identical to your situation, the defeat of such proposed amendment is indicative of the Congressional pulse in matters relating to Section 13(d) of the Act.

Sincerely,

Herbert A Goldstein  
Acting Assistant Administrator  
Wage and Hour Division

William M. Otter  
Administrator