

FLSA-412

April 2, 1982

This is in reply to your letter of February 24, 1982, requesting an opinion on the application of the Fair Labor Standards Act. You state that you represent a publishing company. The company currently produces a daily newspaper of general circulation, and intends to begin producing a shopping news publication. You request an opinion as to whether the publication would be a newspaper for the purposes of section 13(d) of the Act, and whether carriers delivering the publication would come within the 13(d) exemption.

You state that the publication will be produced in a broadsheet format, on standard newsprint. The pages will be on the same size as those of the company's daily newspaper, and the fold will be identical. The column size, type-style, and make-up will also be identical to the daily's. The name of this publication will be different and dissimilar to the name of the daily newspaper. The publication will contain up to 90% advertising, the exact percentage to vary with advertising sales. The total number of pages will also vary, based on this same factor. Most of the advertising will be "display" advertising, although there will be some classified ads. The nonadvertising content will be news of general local interest, taken directly from the company's daily newspaper. At least 1/4 of the front page will be reserved for news items. Advertising supplements will sometimes be inserted.

The company will contract with carriers, both minor and adult, to deliver the publication. In most cases, these carriers will also deliver the daily newspaper. Because the shopping news publication will be published at a later time than the daily, most carriers will have to cover their routes twice, instead of carrying and delivering both publications at one time. Carrier duties will include placing rubber bands or plastic bags on the product but will not include inserting supplements. The publication will be delivered one day each week, free of charge, and only to those residences that do not regularly subscribe to the company's daily newspaper.

Section 13(d) of the Act provides an exemption from its minimum wage, overtime, and child labor provisions for any employee engaged in the delivery of newspaper to the consumer. A shopping publication, usually referred to as a "shopper" or shopping news guide, which has the semblance of a newspaper, and contains some news, even though small in amount, is considered a newspaper for purposes of section 13(d). The delivery of advertising circulars, handbills and the like along with a shopper that qualifies as a newspaper does not defeat the exemption.

We are the opinion, based on the information submitted, that the shopping news publication you describe qualifies as a newspaper under section 13(d). Therefore, the exemption provided by section 13(d) would apply to the employees engaged in the delivery of this shopping news publication.

Sincerely,

William M. Otter
Administrator